

C A Z O N
X C 2
- 68 E 04



**The Fourth Report
of the Select Committee
on Election Laws**

April, 1971



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114659980>

Ontario, Legislative assembly, Select
Committee on Election laws.

CA20N
XL 2
68EO4



**The Fourth Report
of the Select Committee
on Election Laws**

April, 1971

CONTENTS

	PAGE
APPOINTMENT AND TERMS OF REFERENCE.....	4
LIST OF MEMBERS.....	4
REPORT AND RECOMMENDATIONS.....	5
COMMENTARY:	
The Municipal Election System.....	7
The Franchise.....	7
Preparation of the List.....	8
Representation.....	8
The Ballot.....	8
Date of Elections, and Term of Office.....	9
Mandatory Advance Polls.....	9
Proxy Voting.....	10
Voting on By-laws.....	10
Liquor Votes.....	10
Qualification and Disqualification for Office.....	10
New Elections (By-Elections).....	11
Other Matters Considered.....	12
Meetings, Hearings and Staff.....	13
SCHEDULE I.....	15
SCHEDULE II.....	71
DISSENTING OPINIONS.....	75

APPOINTMENT AND TERMS OF REFERENCE

July 23rd, 1968.

On motion by Mr. Robarts, seconded by Mr. MacNaughton,

Ordered, That a Select Committee of this House be appointed to continue the review of the terms and provisions of the election laws and any related Acts and regulations, in the light of modern needs, practices and concepts, for the proper representation of those qualified to vote, and to report its findings and recommendations to this Assembly.

And that the Select Committee have authority to sit during the interval between Sessions and have full power and authority to employ counsel and such other personnel as may be deemed advisable and to call for persons, papers and things and to examine witnesses under oath, and the Assembly doth command and compel attendance before the said Select Committee of such persons and the production of such papers and things as the Committee may deem necessary for any of its proceedings and deliberations, for which purpose the Honourable the Speaker may issue his warrant or warrants.

And the said Committee to consist of thirteen members to be composed as follows:—

Edward Dunlop, Chairman.....	York-Forest Hill
Syl Apps.....	Kingston and the Islands
J. Albert Belanger.....	Prescott and Russell
Leo Bernier.....	Kenora
Alex Carruthers.....	Durham
William Ferrier.....	Cochrane South
William Hodgson.....	York North
Bernard Newman.....	Windsor-Walkerville
Clarke T. Rollins.....	Hastings
Vernon M. Singer, Q.C.....	Downsview
Gordon E. Smith.....	Simcoe East
Richard S. Smith.....	Nipissing
Fred Young.....	Yorkview

FOURTH REPORT APRIL, 1971

To The Members of The Legislative Assembly of Ontario:

1. The Select Committee on Election Laws presented its first report in February, 1969. The principal recommendations of that report were incorporated in Bill 217 of that session, now *The Election Act*, S.O. 1968-69, c. 33. The Committee's second report was presented in October, 1969, and its third report in June, 1970. The recommendations from the second and third reports have not yet received legislative attention.

RECOMMENDATIONS

2. The Committee presents its fourth report herewith, and makes recommendations as follows:

- (1) That Part III of *The Municipal Act*, R.S.O. 1960, c. 249, as amended, be repealed and that a new Part III be enacted as proposed in Schedule I of this report to provide, *inter alia*:
- (2) That the franchise be based on voting age, citizenship and residence as nearly as possible so as to conform with the provincial franchise, except that property owners and their spouses be entitled to vote in a municipality in which they own property but do not reside. [See Schedule I, sections 11, 23 and 24; and paras. 6 and 7],
- (3) That municipal elections, and the rights, responsibilities and duties of electors, candidates and electoral officials, conform as nearly as possible to those of such persons at a provincial election including, the form of ballot, the method of marking and casting the ballot, and the general conduct of the poll. [See Schedule I, sections 2 and 42 to 45; and para. 10],
- (4) That the list of electors and polling list be prepared by enumeration and revision, supplemented as necessary by information from the assessment rolls with respect to non-residents of the municipality in which the election is being held who own property in that municipality. [See Schedule I, sections 12 to 29; and paras. 5 and 8],
- (5) That elections be held on the first Monday of December in an election year, and that the term of office be for 2 years commencing the 1st day of January following the election year, except as may be otherwise provided in special legislation, thus harmonizing all local government elections, including those for school boards. [See Schedule I, sections 2, 8 and 9; and paras. 11 and 12],

- (6) That advance polls be mandatorily held on the Saturday and Monday, nine and seven days respectively, before polling day. [See Schedule I, section 59; and para. 13],
- (7) That proxy voting be made available to disabled persons and students otherwise qualified to vote who attend institutions of post-secondary education. [See Schedule I, section 31; and para. 14],
- (8) That any resident of Ontario since the 1st day of January in an election year, otherwise qualified to vote in any municipality, be entitled to stand for office in any other municipality. [See Schedule I, section 32; and para. 17],
- (9) That disqualification of candidates be generally less restrictive than heretofore, and grounds such as non-payment of taxes be eliminated. [See Schedule I, section 33; and para. 18],
- (10) That where a vacancy occurs on the council or on a school board in a non-election year, other than a vacancy in the office of mayor, reeve, deputy reeve or controller, a new election (by-election) be held to fill the vacancy. [See Schedule I, sections 38 and 108 to 111; and para. 19],
- (11) That where a vacancy occurs on the council or on a school board during an election year the vacancy be filled by council or the board, by a vote of members of council, or the board, in accordance with proposed new procedures. [See Schedule I, sections 108 to 112],
- (12) That so as to conform with the foregoing recommendations, all or part of *The Municipal Act*; *The Public Schools Act*; *The Separate Schools Act*; *The Schools Administration Act*; *The Secondary Schools and Boards of Education Act*; *The Liquor Licence Act*; *The Lord's Day (Ontario) Act*; *The Assessment Act*; *The Municipal Franchise Extension Act*; *The Voters' Lists Act*; *The Public Health Act*; and *The Fluoridation of Public Water Supplies Act* be amended, repealed or reviewed as proposed in Schedule II, and para. 16.

3. The Committee has not yet settled upon measures for the control of election finances (see Third Report, page 13, paras. 31 to 33), and recommends that this subject be further addressed by this Committee, as its final task in the discharge of its responsibilities.

C O M M E N T A R Y

THE MUNICIPAL ELECTION SYSTEM

4. At the outset the ownership of property was the sole root to the franchise in municipal elections. The probable reason for this was that the main source of local government revenue was taxes on real property. Subsequently, the spouse of a property owner was entitled to vote, as were the sons and daughters of farmers, and still later, lodgers and roomers were entitled to vote under the terms of *The Municipal Franchise Extension Act*. The reason for these later changes was probably a recognition that through the payment of rent, such persons did bear their share of the costs of the local government services which they enjoyed even where not separately assessed. Certainly, they contribute through their payment of personal income, consumption and other taxes which now find their way to municipal governments via conditional and unconditional grants.

5. As it stands now, the preparation of lists of electors and polling lists is determined upon the basis of the names found upon the assessment roll of persons entitled to be assessed, together with the names of those who were spouses, farmers' sons and daughters, lodgers and roomers. Despite the additional information recently required in the preparation of the assessment roll, the task of a municipal clerk in preparing a reasonably accurate polling list has become almost impossible. This has lead to some lack of elector confidence in the accuracy of the list, and thus in the electoral process.

THE FRANCHISE

6. The Committee has recommended a new municipal franchise which is based as nearly as possible on the provincial franchise in terms of:

- (1) Voting Age¹—See Schedule I, section 11 (1)(a).
- (2) Citizenship²—See Schedule I, section 11 (1)(b).
- (3) Residence³—It is proposed that a person be eligible to vote in a municipality in which he has resided since the 1st of October in an election year—the date of the commencement of the proposed enumeration—provided that he meets the requirements of the foregoing subparagraphs (1) and (2). See Schedule I, section 11 (1)(d).
- (4) Ownership of property in a municipality in which the voter is not a resident, provided that he meets the requirements of the foregoing subparagraphs (1) and (2).

¹ *The Election Act, 1968-69 (E.A.)*, S. 9 (1) (a), S.O. 1968-69, c. 33.

² *E.A.*, S. 9 (1) (b); and *The Third Report*, June 1970 (3rd R.) page 8, para. 12.

³ *E.A.*, S. 9 (1) (d).

7. Such a franchise recognizes that all residents of voting age participate in the payment of taxes which contribute to municipal revenue and are thus entitled to vote at an election provided that they are otherwise qualified. It also recognizes that persons who own property in municipalities in which they do not reside have a stake in that community, and should be entitled to their vote. The most obvious example of this is a municipality in a recreation area, in which a person owns a cottage upon which he pays municipal taxes, and enjoys its use for only a portion of the year. A vote is also recommended for his or her spouse, partly because the new *Estate Tax Act*, S.C. 1968-69, c. 33 as amended, provides for tax free *inter vivos* gifts between husband and wife. Under existing legislative provisions a person who owns property in more than one ward in a municipality may vote in each such ward. Under the 'one man—one vote' dictum advanced in the Committee's third report⁴ this is less than egalitarian. It is proposed in recommendations in this report that this right be extinguished. See Schedule I, sections 11 (3) and 55.

PREPARATION OF THE LIST

8. If the franchise is to be extended to all residents otherwise qualified, as proposed, then the preparation of the list from the assessment roll and related data is inadequate. In its earlier reports, particularly the third report⁵, the Committee has advanced reasons for, its opposition to the establishment of voter registration and similar systems, and has recommended in favour of enumeration. It follows then, that the preparation of the list of electors for municipal election purposes should be prepared also by enumeration, supplemented by revision, re-enumeration and, where necessary, reference to the assessment roll.

REPRESENTATION

9. Representation on council is governed by Part II of *The Municipal Act*, and by special legislation which governs regional and metropolitan municipalities. Election to all such offices will be governed by the proposed new Part III of *The Municipal Act* as set forth in Schedule I of this report. Generally speaking, representation seems to be appropriately set forth in the general legislation.

THE BALLOT

10. The Committee's first report⁶ made recommendations relating to the form of ballot to be used at provincial elections, and the method of its marking. It is proposed that the same form of ballot and method of marking be followed in local government elections. Municipal ballots are usually more complex than those required at

⁴(3rd R.) page 16, para. 40.

⁵(3rd R.) page 17, para. 46; pages 19 and 20, para. 59.

⁶The First Report. February, 1969. Page 7, para. 15 (vii) and Schedule II.

provincial elections. The similarity proposed between municipal and provincial ballots has to do with the presentation of names of candidates, and the scheme designed, and enacted⁷, to reduce the frequency of spoiled ballots.

DATE OF ELECTIONS, AND TERM OF OFFICE

11. As the law now stands, election day is New Year's Day except where the local council passes a by-law establishing an earlier date. The reason for the choice of New Year's Day is obvious, this provides that the time for the change of responsibility from one elected group to another is precisely identified. Against this, however, is the recognition that the complexities of the modern era make it impossible to exchange these responsibilities at a moment's notice. Most councils in Ontario have taken advantage of the existing legislation which enables them to set the date earlier than New Year's Day. If the election date is set for much earlier than about one month before New Year's Day, one encounters the uncomfortable situation in which the council in office becomes a lame duck for just such a period. The majority of councils have chosen the first Monday in December as the best election date to choose as a compromise between these positions. It is the Committee's view that the first Monday in December is the best date. Uniformity of election dates will, it is submitted, create increased voter interest in municipal elections.

12. Under the general legislation, councils may determine the term of office by by-law as being for one, two or three years. *The Secondary Schools and Boards of Education Act*, R.S.O. 1960, c. 362 as amended, requires that the term of office of county or division school boards shall be two years, and that the elections for these school boards shall be the first Monday in December in an election year. The majority of municipalities have determined by by-law that two years is a desirable term for council. This being so, the Committee has recommended in Schedule I, section 9, that the term of office for council be two years, except where otherwise provided in special legislation. *The Municipality of Metropolitan Toronto Act*, R.S.O. 1960, c. 260 and *The Regional Municipality of Ottawa-Carleton Act*, S.O. 1968-69, c. 115 provide that the term of office is for three years for council, metropolitan council and local boards. If the Committee's recommendations are accepted the elections for all local government purposes, except those of Metropolitan Toronto and the Regional Municipality of Ottawa-Carleton, will be for two year terms, and in all cases council and local board (including school board) elections will be harmonized as to date.

MANDATORY ADVANCE POLLS

13. It has been suggested, sometimes, that the dates of municipal elections have been set in the winter months so as to deny cottage owners their right to vote. The Committee recognizes that this has not

⁷E.A., section 51 (3) and (5).

been the case, particularly for the reasons adduced in paragraph 13. Nevertheless, the absence of mandatory advance polls has made it difficult for some cottage owners and other non-resident voters to exercise their franchise in any additional municipalities in which they are entitled to vote. The establishment of mandatory advance polls, combined with improved means of transportation will make it relatively easy for voters to exercise their franchise wherever it may lie.

PROXY VOTING

14. The same reasons advanced for extending the proxy vote to otherwise qualified disabled persons and students at post-secondary institutions of learning in the Committee's third report⁸ with respect to provincial elections, apply equally to municipal elections.

VOTING ON BY-LAWS

15. Although the determination of questions by referendum is not a procedure which appeals to the majority of the Committee as a desirable feature in modern democratic government, the Committee agrees that council should continue to have the right to place questions before the electorate but only at regular elections. Section 260 of Part X of *The Municipal Act*, however, sets forth that those entitled to vote on money by-laws be an electorate different from the present municipal electorate generally, and different from the electorate proposed under the local government franchise recommended in this report. The Committee recommends that the franchise be uniform for all local government purposes, including money by-laws. [See Schedule II, section 3.]

LIQUOR VOTES

16. Local option in determining the distribution of liquor is a principle which has been very long established in Ontario. This option has been exercised usually through a special form of referendum provided for in sections 69 to 84 of *The Liquor Licence Act*, R.S.O. 1960, c. 218, as amended. So as to be economical, and to reduce the complexities of this particular kind of referendum, it is proposed that the local option henceforward be determined by the electorate as any other question at a municipal election, save that a significantly reduced number of petitioners may be able to lodge a petition, the effect of which would be to require council to place this question on the ballot at the next regular election. This requires the amendment of *The Liquor Licence Act* as proposed in Schedule II, section 2.

QUALIFICATION AND DISQUALIFICATION FOR OFFICE

17. The existing legislation requires that a person to be qualified to stand for office at an election be eligible to vote at that election,

⁸(3rd R.) Page 13, paras. 29 and 30.

with some few exceptions. In most cases it is now very easy to qualify oneself by the simple device of buying or renting small premises in the municipality in which one proposes to qualify for election. Accordingly the existing law does not really prevent a carpetbagger parachuting himself into a municipal election. The Committee recommends, therefore, that anyone who has resided in Ontario since the 1st day of January of an election year, and is entitled to vote in any Ontario municipality under the proposed new Part III of *The Municipal Act*, be qualified for election in any other Ontario municipality. The effect of this proposal—quite properly in the view of the Committee—is to leave the decision in the hands of the voters.

18. In its studies of the disqualification of persons to stand for office, the Committee found many had been designed, no doubt, to meet the needs of former times, and some of which are still applicable. Clearly, non-payment of taxes is not one. There are other than electoral means to enforce the payment of taxes. Similarly, the Committee can see no reason to continue the disqualification of such persons as a keeper of a local lock-up, a clerk of a division court and a registrar of deeds. The Committee agrees with the Committee on Conflicts of Interests⁹ that adherence to the doctrine of disclosure is the best means for the prevention of conflict of interest. It also recognizes, however, that certain persons would likely—by virtue of the particular position they hold—have a conflict of interest. The Committee recommends the continuation of the doctrine of disqualification as proposed in Schedule I, section 33, but this recommendation reduces the classes of persons who are statutorily disqualified, and leaves more fully in the hands of the voters the determination of the persons who are to represent them.

NEW ELECTIONS (BY-ELECTIONS)

19. When a vacancy has occurred on a municipal council or school board, there has been some difficulty in determining the best means to fill it. The costs of a new election (by-election) have to be considered. When the term of municipal office was uniformly one year, such costs seemed hardly to be justified. Many suggestions have been advanced from time to time as how best to cope with this difficulty. It has often been suggested that the person who ran second and lost in the previous election should now be appointed. The problem inherent in this idea is that the person who ran second might have acquired only a handful of votes and clearly would not have been the real second choice of the voters. As the matter stands now, and largely because of the problem just mentioned, the filling of vacancies is left in the hands of the council or board. If the recommendation that there be a uniform two year period of office (except within Metropolitan Toronto and The Regional Municipality of Ottawa-Carleton) is accepted, the Committee recommends that there be a new election (by-election) in a non-election year, because of the substantial term of office remaining

⁹Report of the Committee on Conflicts of Interests. December, 1968.

to be filled. If, however, a vacancy occurs during an election year, and having regard for the relative shortness of the term of office that still remains, the Committee recommends that the vacancy be filled by council. [See Schedule I, sections 108 to 112.]

20. The costs of new elections (by-elections) are a consideration regarded as important by the Committee. The Committee recommends that the office of councillor or member of school board be filled by a new election (by-election) in a non-election year, but it recommends against holding such an election to fill offices subject to election at large, such as mayor, reeve, deputy reeve or controller. The costs of holding an election at large for such purposes, combined with the probable lack of interest on the part of the electorate in many cases, causes the Committee to recommend that vacancies in these offices be filled by council. [See Schedule I, section 110.]

OTHER MATTERS CONSIDERED

21. The Committee also considered certain other matters relating to local government elections, but did not reach a consensus with respect to them. They are not matters that need to be dealt with immediately, but should be kept in mind in the future, and particularly with respect to any amendment to the special legislation governing regional or metropolitan municipalities, or when preparing any such new legislation.

22. *Representation, additional considerations*—It is important at all times to insure that local government is kept close to the people. It is important to guard against the potential danger that members of councils of the area municipalities comprising metropolitan and regional governments may have to represent too large a number of residents to be able to discharge their duties effectively.

23. *Direct election to councils of metropolitan or regional governments*—Some Members of the Committee saw merit in providing for direct election to the councils of metropolitan and regional governments, providing that the head of the council of the area municipalities comprising those governments, continue to be elected to the metropolitan council through their election as heads of the councils of the area municipalities. Others felt that the existing constitutions of the metropolitan and regional governments as found in special legislation, in some cases providing for direct election, and in other cases not, had been carefully considered when this legislation was enacted, and that these constitutions had been designed to meet particular circumstances, and they would be loath to make a general recommendation respecting direct election at this time.

24. *One office per ward*—Existing legislation provides that councils may divide municipalities into wards for electoral purposes, and that they may provide for one, two or three councillors to represent each such ward. With this goes the opportunity to plump for a single candidate by not voting for a second and third candidate where a second or third office is to be filled. With respect to the single candidate voted for, this gives the voter the equivalent of three votes, but he denies himself a vote for his other representative or representatives. Some felt that the flexibility provided by the existing provisions is desirable, and some were equally opposed to their continuation. The question was not resolved.

25. *Leader of Council*—Some Members of the Committee felt that, sooner or later, special legislation would likely be introduced to provide for the establishment of the office of Leader of Council in those municipalities where an Executive Committee has been provided for, either by general or special legislation. By virtue of existing legislation, this could apply only to area municipalities with a population of 100,000 or more. Some Members of the Committee felt that this would foster the development of political groups at the municipal level, by making it possible for members of council to band themselves together into such groups to capture the apparatus of power—the office of Leader of Council and the Executive Committee. If such an office were to be established, the Leader of Council would, of course, be chosen by council from among members of council. Others felt strongly that nothing should be done to encourage the development of political groupings, even in the larger municipalities, while still others saw advantages in facilitating this process as being likely to provide the voters with clear cut choices between the policies of opposing groups. If the office of Leader of Council is established at some time in the future when the local political climate appears to be propitious, a companion change would be that the mayor would be chosen by council from among distinguished residents to serve as chairman of council, much as does Mr. Speaker in the Assembly. He would also be in a position to free the Leader of Council from enumerable ceremonial duties, thus enabling the Leader to devote himself to the real work of the council. All this would mean, of course, that the Leader of Council would not be chosen by general vote. Some Members of the Committee saw advantages in this, others saw disadvantages.

MEETINGS, HEARINGS AND STAFF

26. Since presenting its third report, the Committee has held six meetings and one public hearing. It has benefitted by study of the report (January, 1970) of the Municipal Elections Committee appointed by the Minister of Municipal Affairs, and the report (June, 1969) of the committee appointed by The Association of Municipal Clerks and Treasurers of Ontario, and from the study of many briefs and submissions. The Committee also enjoyed the opportunity to attend a meeting of the

House of Commons Special Committee on Control and Limitation of Election Expenses.

27. The Committee has been well served by and is most grateful to its Staff who are Roderick Lewis, Q.C., Chief Consultant; F. A. Braybrook, Consultant; D. Donald Diplock, Q.C., Counsel; Mrs. Mary Brand, Clerk; and Miss Cleo McElroy, Secretary.

EDWARD DUNLOP,

Chairman,

Select Committee on Election Laws.

Schedule I

The Municipal Act

PART III

1. For the purposes of this Part,

Interpre-
tation

- (a) “advance poll” means a poll held under section 59;
- (b) “assistant returning officer” means a person qualified to vote, appointed by the Clerk to assist in the conduct of an election;
- (c) “assistant revising officer” means a person qualified to vote appointed by the Clerk to assist in the revision of the list of electors;
- (d) “candidate” means a person qualified to be elected a member of council or any local board, who is nominated in accordance with the procedure established by this Part, and whose nomination is certified by the Clerk;
- (e) “corrupt practice” means any act declared to be a corrupt practice by any law in force in Ontario;
- (f) “constable” means a person appointed by the Clerk or the deputy returning officer to maintain peace and order at an election;
- (g) “election” means an election governed by this Part;
- (h) “election assistant” means a person qualified to vote appointed by the Clerk to assist in the conduct of an election;
- (i) “election court” means a court constituted under *The Controverted Elections Act* for the trial of a petition or a summary trial court constituted under that Act;
- (j) “election year”, subject to the provisions of any special or general Act, means a year in which a regular election is to be held in accordance with the provisions of this Act;
- (k) “elector” means a person qualified to have his name entered on the polling list;

- (l) "local board" means a local board as defined by *The Department of Municipal Affairs Act*;
- (m) "minister" means the Minister of the Department of Municipal Affairs of the Province of Ontario;
- (n) "new election" means an election other than a regular election;
- (o) "nomination day" means the last day for filing nominations;
- (p) "polling day" means the day on which the poll is to be taken under this Part;
- (q) "polling list" means the list of electors revised by the Clerk and certified, with a certified copy of the statement of changes and additions attached thereto and delivered to each deputy returning officer as required by this Part;
- (r) "polling subdivision" means a polling subdivision established by the Clerk;
- (s) "prescribed" means prescribed by the Minister;
- (t) "residence", and similar expressions used in relation to a person, means his true, fixed, permanent home or lodging place to which whenever he is absent he has the intention of returning, subject to the following rules:
 1. The place where a person's family resides shall be his residence unless he takes up or continues his residence at some other place with the intention of remaining there, in which case he shall be deemed to be a resident of such other place;
 2. The place where a single person occupies a room or part of a room as a regular lodger or to which he habitually returns not having any other permanent lodging place, shall be deemed to be his residence;
- (u) "scrutineer" means any person who is at least sixteen years of age, and who is appointed by a candidate to represent him at the revision of the preliminary list of electors, in a polling place, and at the counting of votes;

- (v) "voting age" means that age at which a person is eligible to vote at the election of members to the Legislative Assembly of Ontario;
- (w) "voter" means a person entitled to vote at an election under this Part, but does not include a separate school supporter at an election for public school purposes, or a public school elector at an election for separate school purposes.

2. Subject to the provisions of any special or general Act of the Legislative Assembly providing for the qualification of electors and the qualification, nomination and election of members of any local board or commission as defined by *The Department of Municipal Affairs Act*, or for obtaining the opinion of electors on any by-law as defined by Part X hereof, or for the answering of any question submitted pursuant to the provisions of any Act of the Legislative Assembly, this Part applies to elections held or to be held for the purposes of:

- (a) electing the members of councils of local municipalities and boards and commissions thereof; and
- (b) electing the members of councils of metropolitan and regional municipalities where direct election of members of those councils is required by any special or general Act; and
- (c) obtaining the opinion of electors on any by-laws; and
- (d) answering any question,

required or authorized by this or any such Act.

3. Subject to the provisions of any special or general Act of the Legislative Assembly, for the purposes of this Part and except as provided in section 492, the clerk shall be the returning officer and the revising officer for the municipality.

4.—(1) Subject to the provisions of subsection 2, the ^{Polling} _{subdivisions} Clerk shall by the first day of August in an election year divide the municipality into polling subdivisions.

- (2) A polling subdivision shall,
 - (a) so far as is practicable, contain no more than 350 electors;
 - (b) not extend beyond the boundaries of one ward or of an electoral district established for the purposes of the election of members to the Legislative Assembly or the House of Commons.

(3) Whenever a new election is required to be held the Clerk shall forthwith divide the municipality or ward into as many polling subdivisions as he deems necessary for the proper conduct of the election.

Oaths,
who to
administer

5.—(1) Except where otherwise provided, an oath may be administered by any person authorized by law to administer oaths in the Province of Ontario and for the purposes of this Part an oath includes an affirmation.

(2) The Clerk may administer any oath required by this Act, and deputy returning officers and poll clerks may administer any such oath except an oath to be taken by the Clerk.

No charge
for adminis-
tering oaths

(3) Every person administering an oath under or for the purposes of this Act shall administer the oath gratuitously.

6.—(1) The Clerk of every local municipality shall from time to time appoint,

(a) the places at which polls shall be opened if a poll is required;

(b) a deputy returning officer and a poll clerk for each poll;

and such appointments shall be made, so far as possible, at least one month before polling day, and as far as practicable the deputy returning officers and poll clerks shall be appointed for polls for the subdivisions in which they reside.

(2) The Clerk may appoint election assistants.

(3) If a deputy returning officer or poll clerk signifies to the Clerk in writing that he will not act, the Clerk shall appoint another person to act in his place.

(4) If a deputy returning officer or poll clerk does not attend at the opening of the poll, the Clerk shall appoint another person to act in his place.

Oath of
office

(5) Every deputy returning officer, poll clerk and election assistant, shall be qualified to vote at the election and before entering upon his duties, shall take and subscribe the prescribed oath.

Duties of
clerk and
election
assistant

(6) The poll clerk, and the election assistant if any, shall assist the deputy returning officer in the performance of the duties of his office and shall obey his orders.

(7) The appointment and oath of the deputy returning officer shall be endorsed upon or attached to the poll book.

(8) The Clerk may provide for such clerical and other ^{Clerical assistance} assistance as is necessary in the performance of his duties.

(9) The Clerk may appoint assistant returning officers and assistant revising officers as he deems necessary.

7.—(1) Except where otherwise specifically provided by this or any other special or general Act the cost of an election ^{Cost of an election to be borne by municipality} conducted under the provisions of this Part shall be borne by the municipality.

(2) The rates of pay and the fees and disbursements authorized by this Part to be paid shall be in accordance with the schedule of rates, fees and disbursements prescribed by the Minister.

(3) The duties of the Clerk under this Part, and of those employees of the municipality engaged to assist him or assigned to his department, shall be included in their duties as an officer and employees of the municipality, and any expenses of the Clerk's office or department in the performance of the duties of the Clerk and his staff under this Part shall be included in the annual estimates of the municipality.

8. The day for polling shall be the first Monday in ^{Polling day} December in each election year.

9. Subject to the provisions of any special or general Act, ^{2 year term} and except where otherwise specifically provided in this Act,

(a) the term of office of all offices for which an election is held pursuant to the provisions of this Act shall be two years commencing the first day of January in the year following an election year; and

(b) the polling day for the first election to be held pursuant to this Act shall be the first Monday in December of 1972.

10. The members of a council, local board or commission shall hold office until their successors are elected and the new council, local board or commission is organized in accordance with the provisions of this Act.

11.—(1) Every person who, on polling day,

^{Who to be entered on list of voters}

(a) is of voting age;

(b) is a Canadian citizen or other British subject;

(c) is not disqualified under this Act or otherwise by law prohibited from voting;

(d) has resided in the municipality in which an election is being held from and including October 1st in an election year and is, for the purposes of this Act, ordinarily resident in that municipality;

is qualified to vote at the election in that municipality.

(2) Notwithstanding the provisos of clause (t) of section 1, a person whose name is entered on or entitled to be entered on the last assessment roll returned to the Clerk as an owner or wife or husband of the person whose name is so entered on or entitled to be entered on the roll in a municipality in which an election is being held other than the municipality in which he or she is ordinarily resident, and who is otherwise qualified by this section to vote, is qualified to vote at the election in that municipality.

(3) Where a person is qualified to vote by subsections 1 and 2, he or she may vote only once in each municipality.

(4) A person shall, for the purposes of this section, be deemed to reside in the municipality erected or created by amalgamation or enlarged by the alteration of boundaries where the municipality or part thereof in which he was residing is erected or created by amalgamation or enlarged by an alteration of boundaries on or after January 1st in an election year.

(5) For the purpose of this section, a solemn declaration made by a person declaring that he is qualified to vote in accordance with the provisions of subsection 1 is *prima facie* evidence of the facts declared.

(6) Persons who are prisoners in penal or reform institutions, or who are patients in mental hospitals, or who have been transferred from mental hospitals to homes for special care as mentally incompetent are disqualified from voting at any election governed by this Act.

Enumeration **12.** The Clerk in an election year shall appoint in writing for each polling subdivision a person of voting age to be an enumerator of those qualified to vote in the election and to prepare a list thereof, and he shall require each enumerator to take and subscribe the prescribed oath.

13. The Clerk shall supply each enumerator with prescribed forms for the purposes of the enumeration.

14.—(1) The enumerator shall, during the first 10 days of October, by means of,

- (a) a house-to-house visit; and
- (b) such other sources as may be available to him,

prepare a list under headings of names of streets where possible and in the order of street numbers in subdivisions in which street numbering is in effect, or alphabetical order, of all persons in the polling subdivisions who are qualified to vote at the election.

(2) The Minister may in a year in which an election is conducted for the purposes of electing a member or members to the Legislative Assembly declare that the enumeration taken for that election may be used for the purposes of an election conducted pursuant to the provisions of this Part where the nomination day for the Provincial Election is not earlier than the second Thursday in September.

(3) Where the Minister exercises the power conferred by subsection 2, the provisions of this Part with respect to revisions of the list shall apply.

15. The enumerator shall also enter on the list opposite the names of those persons who are Roman Catholics and who request to be designated as separate school supporters, the letter "S".

16. The name and address of every person entitled to be entered on the list shall at the time of visiting the dwelling place of such person, be entered on an enumerators' record which shall be signed by the enumerator, and a duplicate thereof shall be detached from the book and left at such dwelling place.

17. In making the house-to-house visits, the enumerator shall visit every dwelling place in the polling subdivision,

- (a) at least once between 9 o'clock in the forenoon and 7 o'clock in the afternoon; and
- (b) unless he has ascertained from an occupant of each such dwelling place that no person residing therein remains to be entered on the list, at least once between 7 o'clock and 10 o'clock in the afternoon,

and, where, upon making the last of such visits, the enumerator is unable to secure all the information necessary, the enumerator shall leave at such dwelling place the prescribed notice of inability to obtain information.

18. The enumerator shall at all reasonable times and upon producing proper identification be given free access for the purposes of enumeration to the entrance door to each dwelling unit in any building having more than one dwelling unit.

19. Every person who wilfully obstructs or interferes with the enumerators in the performance of any of their duties or the exercise of their rights under this or any other section of this Act is guilty of an offence.

20. The enumerator, immediately after the completion of the list shall,

- (a) certify the list by prescribed oath;
- (b) deliver it to the Clerk together with the book of enumerators' record forms used in the preparation of the list.

21. Every enumerator who wilfully neglects, omits or refuses to perform any of the duties imposed on him by this Act forfeits his right to payment for any services already rendered.

22. The Clerk may at any time replace any enumerator appointed by him by appointing another enumerator to act in his place and stead and, upon receiving notice in writing from the Clerk of his replacement the enumerator so replaced shall forthwith deliver to the Clerk his credentials and all papers and materials supplied to him.

23.—(1) Immediately after the return of the enumerators' lists for each polling subdivision the Clerk shall cause to be added to such lists the names of other persons who are qualified by virtue of subsection 2 of section 11 to be entered on the list, and the Clerk shall insert the letters "NR" opposite the name of an elector who does not reside in the municipality, and the letter "S" opposite the name of every person entered on assessment records as a separate school supporter.

(2) The Clerk shall forthwith cause to be printed or reproduced the list of resident and nonresident electors prepared under subsection 1, and such list shall be the preliminary list of electors.

24.—(1) The name of an elector qualified to vote at an election shall be entered on the list for one polling subdivision only in any one municipality.

(2) The name of an elector shall be included on the preliminary list for the ward or polling subdivision in which he resides and if he does not reside in the municipality his name shall be included on the preliminary list for the ward or polling subdivision in which he is assessed or entitled to be assessed as owner or is the wife or husband of the person so assessed or so entitled to be assessed and if he is so assessed or so entitled to be assessed in more than one ward or polling subdivision his name shall be included on the preliminary list for the ward or polling subdivision in which is situate the land owned by him which has the highest assessment of any of the land for which he is assessed or entitled to be assessed pursuant to *The Assessment Act*.

25.—(1) Immediately after the printing or reproduction of the preliminary list, and not later than November 1st of the election year, the Clerk shall cause one of such copies to be posted up and kept posted up in a conspicuous place in his office, and one in a conspicuous place in the polling subdivision for which it is prepared, and deliver or mail one copy,

- (a) to the head and every member of the council of the municipality;
- (b) to the secretary of every local board the members of which are required to be elected;
- (c) to the clerk of the council of the county or of the regional or metropolitan municipality in which the municipality is situate;
- (d) to the clerk of the municipality responsible for conducting the elections in any combined area for school board purposes;
- (e) to the member of the House of Commons and, to the member of the Legislative Assembly representing the electoral district in which the subdivision is situate.

(2) Every candidate for office shall receive two copies of the list for that part of the municipality for which he is a candidate.

26.—(1) Upon each of the copies of the preliminary list there shall be a prescribed certificate of the Clerk stating that the list is a correct list of all persons appearing by the

enumerators' lists and the assessment records to be electors and the certificate shall include a notice to all electors to examine the lists and to take immediate proceedings to have omissions or errors corrected according to law.

(2) Upon the outside or cover of each of the copies of the preliminary list a prescribed notice shall be printed or written conspicuously setting forth the date on which the list was posted up in the office of the Clerk, the last date for filing complaints that there has been included on the list the name or names of persons that should not be entered thereon and, the last date for filing complaints or omissions or other errors.

Re-
enumeration

27.—(1) Any person whose name is omitted from the preliminary list of persons, or persons who have knowledge of the fact that the name or names of any other person or persons has or have been so omitted, may so inform the Clerk in writing stating the names and addresses of the persons so omitted.

(2) The Clerk, before the preparation of the polling lists, shall cause an enumeration to be made of all persons of whom such notice has been given, and the enumerator shall visit the addresses and enumerate such persons and other persons at those addresses whose names have been omitted from the list.

Revision

28.—(1) Immediately after the printing or reproduction of the preliminary list, the Clerk shall fix the places at which and days of the week on which the list will be revised.

(2) (a) The Clerk shall give notice in a newspaper, having general circulation in the municipality, of the date of the posting of the list and the last days for receiving complaints, and the places at which and days of the week on which the list will be revised, and where there is no such newspaper, the notice shall be published in such manner as the Clerk may direct, and shall be posted in at least two conspicuous places in the municipality.

(b) The day of the posting of the list and the publication of notice shall be at least eight days before the first day of the sitting of the Clerk or assistant revising officer for the purpose of revising the list.

(3) The Clerk and assistant revising officers shall attend from 12 o'clock noon until 9 o'clock in the afternoon at the places and on the days fixed for revising the list and shall

continue to do so until all complaints made pursuant to this section are finally disposed of but in any event for not fewer than 3 days.

(4) The Clerk or assistant revising officer shall permit to be present at the revision of the list of voters any candidate at the election or a scrutineer of such candidate but no such candidate or scrutineer except with the permission of the Clerk or assistant revising officer has any right to take part or intervene in the proceedings.

(5) (a) A person resident in any polling subdivision or who is qualified to vote by reason of the provisions of subsection 2 of section 11, and whose name has not been included or has been incorrectly included by the enumerator in the list for such subdivision may apply to the Clerk or assistant revising officer on or before the date established by the Clerk as the last day for filing such complaints to have his name included on the list or to cause the entry on the list relating to him to be corrected.

(b) Every person so applying shall sign a prescribed application form in which all the information shall be sufficiently filled in, either by the applicant personally or by the Clerk or assistant revising officer at the applicant's request, and before entering the name of the person on the list or before correcting the list, as the case may require, the Clerk or assistant revising officer shall satisfy himself that the applicant understands the effect of the statements in the application and that he is entitled to have his name included on the list or to have the list corrected pursuant to his request.

(6) When the language of the applicant is not understood by the Clerk or assistant revising officer, an interpreter provided by the applicant may be sworn and may act, but in the event of inability to secure an interpreter, the application shall be refused.

(7) If it appears to the Clerk or assistant revising officer that the applicant understands the effect of the statements in the application and that the applicant's name should be included in the list or that the amendment thereof that he requests should be made, he shall certify accordingly by signing the application.

(8) If, in the opinion of the Clerk or assistant revising officer, the statements made by the applicant in his application

Procedure
where
application
refused

Interpreter
where
necessary

Clerk to
enter name
when
satisfied
applicant is
qualified

do not show that the applicant is entitled to have his name included on the list or to have the list amended as requested, he shall inform the applicant that his application is refused, stating the reasons for such refusal, which reasons he shall endorse on the application form.

Complaint as to names which should not be entered

29.—(1) At any time after the posting of the preliminary list and until the first day of revision any person may file with the Clerk a complaint, on the prescribed form, that there has been included on the list of electors the name or names of persons who should not be entered thereon.

Notice to persons objected to

(2) The Clerk upon receipt of the complaint shall forthwith cause to be sent by registered mail to the person objected to at the address mentioned on the list and to such other address, if any, as may be mentioned in the complaint, a notice requiring such person to appear in person or by his representative before him on a day to be named in the notice.

Copy of complaint

(3) There shall be sent with the notice a copy of the complaint.

Hearing of complaint

(4) On the day of hearing named in the notice the person filing the complaint shall attend before the Clerk or assistant revising officer and establish to his satisfaction the validity of such complaint and the Clerk or assistant revising officer after receiving an explanation of the facts alleged and after hearing what is alleged by the person concerning whom the complaint was made, may make such order as he considers just under the circumstances.

Name not to be struck off without notice, and evidence required

(5) Where the person concerning whom the complaint was made does not attend before the Clerk or assistant revising officer on the day of hearing named in the notice and the Clerk or assistant revising officer is satisfied on oath that due notice of complaint has been given to the person or that the person could not be found and the registered notice could not be delivered, the Clerk or assistant revising officer shall not remove any name from the list except upon evidence under oath which satisfies him that the name should not have been included on the list.

Clerk's decision final

(6) The decision of the Clerk or assistant revising officer with regard to the right of a person to vote or to the right to enter on or strike from the lists the name of a person as an elector is final.

Statement of changes and additions to certificates

(7) A statement of changes and additions shall be prepared and certified in a sufficient number of clear copies and the Clerk

shall forthwith send one copy to each person mentioned in section 25.

(8) The Clerk shall prepare the polling list for each polling subdivision by making the appropriate changes in the preliminary list in accordance with the statement of changes and additions and shall certify the revised list, and shall attach to the revised list a certified copy of the statement of changes and additions.

30. An irregularity in the preparation or revision of any list is not a ground for questioning the validity of an election.

31.—(1) Any person whose name is entered on the polling list for a polling subdivision and, who is,

- (a) a person other than one described in section 49, and, who is certified by a legally qualified medical practitioner, by certificate filed with the Clerk, to be physically incapable of attending a polling place; or
- (b) a person who is a *bona fide* student at a post-secondary institution,

may vote by proxy in that polling subdivision.

(2) Any person who is entitled to vote by proxy pursuant to the provisions of subsection 1 may appoint in writing a person who is entitled to vote in the municipality in which the person voting by proxy is qualified to vote.

(3) A voting proxy may not act as a voting proxy for more than one person voting by proxy except where the person voting by proxy is the child, grandchild, brother, sister, husband or wife of the voting proxy, in which case a voting proxy may act for more than one such person voting by proxy.

(4) An appointment of a person as a voting proxy is not valid unless it is made after nomination day and does not remain in force after polling day.

(5) A person who has been appointed a voting proxy may apply to the Clerk by 12 o'clock noon on the Saturday preceding polling day to be entered upon the list for the polling subdivision in which the person appointing the voting proxy is entitled to vote.

(6) The Clerk shall take evidence on oath as to the right of the person appointing the voting proxy to vote in the subdivision upon the list for which his name is entered

Evidence
to be
taken by
Clerk

and as to the qualifications of the voting proxy, and, if he finds that the person appointing the voting proxy is duly qualified and that the voting proxy is qualified to act for the person appointing him, he shall give a prescribed certificate across the face of the appointment of the voting proxy to that effect and shall cause the name of the voting proxy to be entered on the polling list after the name of the person appointing the voting proxy.

Not more than one proxy

(7) Not more than one person shall be appointed a voting proxy on behalf of a person appointing the voting proxy at any election.

Oath on voting

(8) A ballot shall not be delivered to a person who claims to vote as a voting proxy unless he produces his appointment as a voting proxy to the deputy returning officer with the certificate of the Clerk thereon as provided in subsection 6 and takes the prescribed oath.

Record of voting by proxy

(9) The deputy returning officer shall record in the poll book the fact that the person appointing the voting proxy voted by proxy and the name of the voting proxy, and shall file the appointment of a voting proxy and certificate with the election papers and return them to the Clerk in the envelope provided for that purpose.

Proxy may vote in own right

(10) A person who has been appointed as a voting proxy is entitled to vote in his own right in the municipality notwithstanding that he has voted as a voting proxy.

Qualification for election to council

32. Every person is qualified to be elected a member of the council who,

- (a) is of voting age;
- (b) is a Canadian citizen or other British subject;
- (c) has resided in Ontario from and including the first day of January of the election year;
- (d) is not disqualified by this or any other Act;
- (e) in the case of elections for public school purposes, is a public school elector; and
- (f) in the case of elections for separate school purposes, is a separate school supporter.

Disqualification

33.—(1) The following are not eligible to be elected a member of a council or entitled to sit or vote therein:

- (a) an enumerator at the election;
- (b) a judge of any court;
- (c) a sheriff, deputy sheriff or sheriff's bailiff;
- (d) the clerk or deputy clerk of the municipality for which he intends to qualify, or of a municipality within the county, region or metropolitan area within which he intends to qualify, unless he resigns his position as municipal clerk or deputy clerk prior to 10 days before nomination day;
- (e) any officer, other than the clerk or deputy clerk, employee or servant of the municipality for which he intends to qualify or of any local board or commission thereof, with the exception of school boards and any officer, employee or servant of any municipality, local board or commission with the exception of school boards within the county, region or metropolitan area within which he intends to qualify, unless he relinquishes such office or employment upon election to council;
- (f) an appointed member of a local board unless upon election to council he resigns his membership on such local board;
- (g) a Crown Attorney;
- (h) a person having himself or by or with or through another an interest in any contract with the municipal corporation or with any commission or person acting for the municipal corporation or in any contract for the supply of goods or materials or services to a contractor for work for which the municipal corporation pays or is liable directly or indirectly to pay, or which is subject to the control or supervision of the council or of an officer of the municipal corporation, or who has an unsatisfied claim for such goods or materials or services;
- (i) a person who, either himself or by or with or through another, has any claim action or proceedings against the municipal corporation, but this clause does not apply with respect to any moneys paid or payable to a member of a council under sections 203, 212, 405, 406, 407 or 409 or under section 7a of *The Planning Act* or with respect to assessment appeals under *The Assessment Act* or *The Local Improvement*

Act or application authorized by *The Planning Act*, or where the claim action or proceeding is one wholly related to the action or inaction of a council and does not involve a personal claim by the person;

- (j) a person who, either himself or by or with or through another, is counsel or solicitor in the prosecution of any claim, action or proceeding against the municipal corporation or in opposing or defending any claim, action or proceeding by the municipal corporation, but this clause does not apply with respect to assessment appeals under *The Assessment Act* or *The Local Improvement Act*, or application authorized by *The Planning Act*, or where the claim action or proceeding is one wholly related to the action or inaction of a council and does not involve a personal claim by the person for whom the person referred to in this paragraph is acting as counsel or solicitor.

Dis-
qualification
not to apply
in certain
cases

- (2) Subsection 1 does not apply to a person by reason only,

- (a) on and after the 18th day of April, 1962, of his being a shareholder in an incorporated company having dealings or a contract with the municipal corporation, unless such person is an officer as defined by *The Business Corporations Act, 1970*, or has a controlling interest in such incorporated company and for the purpose of determining a controlling interest under this clause, when such person is an associate as defined by *The Securities Act, 1966*, the interest of his other associate or associates shall be deemed to be the interest of such person;

- (b) of his being a lessee of the municipal corporation;

- (c) of his being the proprietor of or having a financial interest whether evidenced by the holding of corporate shares, or otherwise interested in a newspaper or other periodical publication in which official advertisements or notices that appear in other newspapers or periodical publications are published by the council or for which the council is a subscriber or which is furnished to any department or officer of a municipal corporation if the same are paid for at the usual rates, and he has not agreed with the municipal corporation to do the whole or the principal part of its printing;

- (d) of his having been appointed under section 409 and paid for his services as commissioner, superintendent or overseer of any work, other than a highway, undertaken wholly or in part at the expense of the municipal corporation;
- (e) of his being a consumer or taker of anything supplied by the municipal corporation or any commission under *The Public Utilities Act* or of his having entered into a contract with the municipal corporation or a commission for the supply of it to him;
- (f) of his having entered into an agreement of sale with a municipal housing commission;
- (g) while being a member of council, of his acting in the place and stead of the head of the council as a member of any board, commission or other body of which the head of the council is a member *ex officio* under any general or special Act;
- (h) of his purchasing or owning a debenture of the municipal corporation;
- (i) of his being related by blood or marriage to a person employed by the municipal corporation;
- (j) of his being entitled to or receiving a pension, retirement allowance, sick leave credit gratuity or any payment in respect of his employment or service with a municipality or local board from or under a contract with a municipality or a local board on or after his retirement from employment or service with the municipality or local board;
- (k) of his having entered into an agreement with the municipal corporation in respect of the acquisition of land by the municipal corporation for a road-widening or curve-adjustment or in a redevelopment area designated by the council with the approval of the Minister under subsection 2 of section 20 of *The Planning Act* or of his having any claim or proceeding against the municipal corporation in respect of such acquisition of land;
- (l) of his having made a deposit with the municipal corporation or with any local board thereof, the whole or part of which is or may be returnable to him in like manner as such a deposit is or may be returnable to all other persons.

Nominations,
when to be
filed

34.—(1) Nomination papers shall be filed with the Clerk at any time during the ten days immediately preceding nomination day or at any time up to the close of nominations on nomination day.

(2) The close of nominations shall be 8 o'clock in the afternoon on nomination day which shall be the 21st day prior to polling day.

(3) A nomination shall be in writing signed by at least 10 electors of the municipality, or in the case of a municipality having 5,000 or fewer electors, by at least 5 electors.

Separate
nomination
for each
candidate

(4) Each candidate shall be nominated by a separate nomination paper, and an elector may sign the nomination papers of different candidates.

(5) The nomination paper shall state the name, residence and school support of the candidate in such manner as will identify the candidate, and shall state the office for which his is nominated.

(6) The nomination paper shall state the name, residence and school support of each of the electors signing the nomination, and

(i) nominations for public school office shall be signed only by public school electors, and

(ii) nominations for separate school office shall be signed only by separate school supporters.

Consent of
candidate

(7) The nomination paper shall be accompanied by the consent in writing of the person therein nominated.

(8) The Clerk or assistant returning officer shall endorse upon the nomination paper the date and time of its filing.

(9) The name, residence and office for which he is nominated of every person nominated for the respective offices shall be posted up as the nomination papers are filed.

(10) Where the nomination paper is filed prior to nomination day, or not later than 5 o'clock in the afternoon on nomination day, the paper shall be examined by the Clerk, and if he is satisfied that it is in order as to the candidate and the requisite number of nominators being entered on the proper list as electors of the municipality, he shall so certify in writing.

(11) Where the nomination paper is filed with the Clerk ^{Nomination paper} after 5 o'clock in the afternoon on nomination day and before the time fixed for the close of nomination,

- (a) the Clerk shall accept the nomination paper and ^{acceptance} announce the name of the candidate;
- (b) if, on examination of the nomination paper, prior ^{rejection} to 5 o'clock in the afternoon on the day next following the nomination day, it appears to the Clerk that the nomination is not in order as to the candidate and the requisite number of nominators being entered on the proper list as electors of the municipality, he shall reject the nomination and give notice of the rejection immediately by registered mail to the rejected candidate and all other candidates, but if he is satisfied that the nomination is in order he shall so certify in writing.

(12) Certification by the Clerk shall be conclusive evidence that the candidate has been nominated in accordance with the provisions of this Act.

(13) The Clerk shall establish and maintain in his office a list setting out the name and residence of every person whose nomination has been certified for the respective offices in the order of certification and copies of this list shall be prominently displayed in one or more locations immediately prior to the time fixed for the closing of nominations.

(14) Upon the filing of a nomination paper it shall remain in the possession of the Clerk.

(15) The onus is on the person nominated to file a *bona fide* nomination paper.

35.—(1) The council of any local municipality may, by ^{Nomination} ^{meeting} by-law passed not later than the 1st day of November in an election year, fix the place of a meeting of the electors for the nomination of candidates for election under this Part.

(2) When the council enacts a by-law under the authority of subsection 1, the nomination meeting shall be held at any time established by the by-law up to and including 7 o'clock in the afternoon on nomination day and the provisions of subsection 1 of section 34 shall not apply.

(3) When the election is by general vote the by-law may fix different places for the nomination meeting for the respective

offices, and when the election is by wards the by-law may fix the place in each ward for the nomination meeting thereof.

Where a township adjoins an urban municipality

(4) Where a township adjoins an urban municipality, a place within the urban municipality may be designated as the place for holding the nomination meeting of the township.

Prospective candidate need not attend

(5) The nomination meeting shall be called to order by the Clerk, and the provisions of section 34 relating to the filing and receipt of nominations shall apply to the filing and receipt of nominations at the nomination meeting and the provisions of section 34 for the certification of nominations shall apply.

(6) In no case is it necessary for a person who becomes a candidate, to be present at the nomination meeting.

Notice of receiving nomination

36. The Clerk shall twice publish, first at least 12 days, and then 6 days, prior to nomination day a notice concerning the receiving of nominations in a newspaper having general circulation in the municipality and where there is no newspaper having a general circulation in the municipality, the notice shall be published in such manner as the Clerk may direct, and shall be posted in at least two conspicuous places in the municipality.

Whose name not to be placed on ballot

37.—(1) The Clerk shall not place on the ballots the name of a candidate whose nomination has not been certified by the Clerk as provided in section 34.

Acclamation

(2) If no more candidates qualify for any office than the number to be elected, the Clerk shall forthwith after the close of nominations declare that candidate or those candidates duly elected.

New election

38.—(1) Where from any cause the requisite number of persons is not elected, the Clerk shall cause a new election to be held to fill the vacancy or vacancies, and the provisions of section 111 shall apply.

(2) Until the required election is held and the council, or sufficient numbers to exceed one-half thereof when complete, is elected, the council in office shall continue in office.

Death of candidate

39. If a candidate for any office dies after being nominated and before the close of the poll a new election shall be conducted and the provisions of section 111 shall apply.

Withdrawal of candidate

40.—(1) A person nominated may prior to the time fixed for the close of nominations withdraw.

(2) A candidate may withdraw at any time after his nomination and before the opening of the poll by delivering to the Clerk an affidavit to that effect, signed by himself and sworn.

(3) If after the withdrawal referred to in subsection 2 there remains only that number of candidates for an office as are required to fill that office, the Clerk shall declare that candidate or candidates as duly elected.

(4) Except as otherwise provided by any general or special Act in an area municipality within a metropolitan or regional municipality where representation to the council of the metropolitan or regional council is determined by the number of votes cast, and if the candidates in an area municipality are declared elected in accordance with the provisions of subsection 3 and it cannot be determined which member or members of council is or are entitled to be a member or members of the metropolitan or regional council, the matter shall be determined by resolution of the council of the area municipality passed before an organization meeting of the metropolitan or regional council.

(5) Where a person has been nominated for more than one office he may withdraw in respect of one or more offices for which he is nominated by filing his withdrawal in writing with the Clerk in his office before the time fixed for the close of nominations or before the close of regular business hours of the Clerk in the afternoon of the same day or within two hours after the time fixed for the close of nominations, whichever is the later, and in default he shall be deemed to be nominated for the office for which he was first nominated.

(6) In the case of a candidate withdrawing where there are more candidates for an office than are required to fill that office, the Clerk shall cause every deputy returning officer to be notified forthwith of the withdrawal, and notice of the withdrawal shall be posted up in a conspicuous place in every polling place in the municipality.

41.—(1) If more candidates are nominated for any office than the number required to fill that office, the Clerk shall subject to the provisions of section 40 provide for granting a poll to determine the holder of that office.

(2) Notice of the time for the holding of the poll, including the advance poll, shall be given by the Clerk forthwith after it has been determined that a poll is required, by publishing in a newspaper having general circulation in the

municipality, and where there is no such newspaper, the notice shall be published in such manner as the Clerk may direct, and shall be posted in at least two conspicuous places in the municipality.

Ballots

42. Where a poll is required, the Clerk shall forthwith cause to be printed a sufficient number of ballots for the purposes of the election.

43.—(1) In cities and towns in which the members of council are elected by wards, there shall be prepared one set of ballots for all the polling subdivisions containing the names of the candidates for mayor, another set for all the polling subdivisions containing the names of the candidates for reeve, or reeve and deputy reeves, and another set for each ward containing the names of the candidates for aldermen or councillors for the ward.

(2) In cities and towns where the members of council are elected by general vote, there shall be prepared for all the polling subdivisions one set of ballots containing the names of the candidates for mayor or mayor and reeve or mayor, reeve and deputy reeve, and another set containing the names of the candidates for aldermen or councillors.

(3) In villages and townships, there shall be prepared one set of ballots containing the names of the candidates for reeve or reeve and deputy reeves and for councillors.

(4) There shall also be separate sets of ballots for;

(a) controllers;

(b) public utility commissioners;

(c) members of school boards.

(5) In a town, the council may by by-law provide that the ballots for mayor, reeve and deputy reeve shall be prepared in separate sets and, in a village or township, the council may by by-law provide that the ballots for reeve, deputy reeve and councillors shall be in separate sets.

(6) A by-law for the purposes mentioned in subsection 5 shall be passed not later in the election year than the 1st day of November and remains in force until repealed, and while in force the prescribed ballots shall be prepared accordingly.

Form of
ballot

44.—(1) The names of the candidates shall be shown on the ballot in order of surnames alphabetically arranged, with

given names preceding the surnames, with the surnames in bold type, and with consecutive numbers preceding each candidate's name.

(2) Where there are two or more candidates whose given and surnames are identical or so nearly identical as to create the possibility of confusion, the address of all candidates shall be shown on the face of the ballot immediately under their names and in sufficient detail as to identify each candidate.

(3) No other identifications such as occupation, title, honour, decoration or degree shall be included with any candidate's name on the ballot, provided, however, that a candidate may use a name commonly called a nickname or other name by which he is commonly known. ^{Idem}

(4) A circle shall be shown on the ballot to the right of each ^{Idem} candidate's name.

(5) All ballots shall be of the same description and as ^{Uniformity of ballots} nearly alike as possible, provided that where separate sets of ballots are used different coloured paper may be provided for different sets.

(6) Unless the council otherwise directs by by-law passed and approved by the Minister prior to the 1st day of November in an election year the names of candidates, numbers and circles shall be one colour the remainder of the face of the ballot shall be black.

(7) The ballots shall be numbered consecutively on the stubs ^{Numbering of ballots} and shall be bound or stitched in books.

(8) The Clerk shall cause to be delivered to each deputy returning officer in one or more locked and sealed boxes, the ^{Supply to be furnished to Clerk and receipt obtained} ballots for his polling subdivision and the deputy returning officer upon receiving them shall make a count of the ballots and forward the prescribed receipt therefor to the Clerk.

(9) The Clerk shall cause to be supplied to each deputy returning officer a sufficient number of ballots to supply the electors on the polling list of his polling place or polling subdivision, and with the necessary materials for electors to mark their ballots, and when delivering them the Clerk shall certify the number of ballots delivered to each deputy returning officer, and this record shall be returned to the Clerk with the other documents required to be returned to him. ^{Supply to D.R.O.}

45.—(1) In place of using separate ballots under this ^{Composite ballots authorized} Part, the council of a local municipality may by by-law, passed and approved by the Minister prior to November 1st

in an election year, authorize the use at a municipal election of composite ballots in such form subject to subsections 1 to 5 inclusive, of section 44 as the by-law prescribes.

Contents

(2) A composite ballot may contain,

- (a) the names of candidates for the offices of a council, school board, public utility commission or other board, commission or body the members of which are required to be elected by the electors of the municipality or any one or more of such offices; and
- (b) any municipal question or by-law on which a vote is to be taken.

Idem

(3) No voter shall be given a composite ballot containing the names of candidates for an office or containing a question or by-law for which he is not entitled to vote.

Ballot boxes to be furnished

46.—(1) Where a poll is required, the Clerk shall procure as many ballot boxes as there are polling places.

How made

(2) The ballot boxes shall be made of durable material, provided with lock and key, and so constructed that the ballots can be deposited therein and cannot be withdrawn without unlocking the box.

Delivery to D.R.O.

(3) At least two days before polling day, the Clerk shall cause to be delivered a ballot box to every deputy returning officer.

Clerk to preserve boxes for future elections

(4) The ballot boxes, when returned to the Clerk after the election, shall be preserved by him for use at future elections and he shall have ready for use, at all times, as many ballot boxes as there are polling places.

D.R.O. to procure boxes when not supplied

(5) A deputy returning officer who has not been provided with a ballot box within the time prescribed shall forthwith procure one to be made, and he may make a requisition upon the treasurer for payment of the cost of it, and the treasurer shall pay the cost to the deputy returning officer.

Voting Machines

47. The council of a local municipality, with the approval of the Minister, may, by by-law and in accordance with such regulations as the Minister may prescribe, authorize for more than one or more polling places at an election the use of machines to supplant or supplement the paper ballot voting system authorized by this Part.

Polling places

48.—(1) Subject to section 49, the Clerk shall provide at least one polling place for each polling subdivision in the

most central or most convenient place for the voters, furnished with light and heat and such other accommodation and furniture as may be required, and the polling place may be provided outside the limits of the polling subdivision.

(2) The Clerk may unite two or more adjoining polling subdivision and provide one polling place for the ^{Union of} _{polling subdivisions} united subdivisions.

(3) The Clerk may provide such additional polling places in any polling subdivision as are required having regard to the ^{Additional} _{polling places} extent of the subdivision, the remoteness of any number of its voters from the polling place and number of voters that may conveniently vote at one polling place.

(4) Where there are two or more polling places in a sub-^{Division to be} division, each polling place shall be designated by the initial ^{according to initial} letters of the surnames of the voters who are to vote in such ^{letters of voters'} polling place, in the following manner, thus, from A to M ^{names} inclusive and from N to Z inclusive, or as may be determined by the Clerk.

(5) Every voter, the initial letter of whose surname is ^{Where voters to vote} included within the letters of the alphabet designating a polling place, shall vote in the polling place so designated.

(6) In local municipalities having a population of greater than 10,000, the Clerk shall mail to each dwelling unit in the municipality a prescribed notice advertising the elector or electors therein of the location of the polling place in which that elector or electors is or are to vote.

49.—(1) Where in a municipality there is situate a hospital or other institution for the reception, treatment or vocational training of persons who have served or are serving in the Canadian Forces or the armed forces of any member of the Commonwealth, or who are blind or deaf, a Workmen's Compensation hospital, a home for the aged, a nursing home or other institution of twenty beds or more, in which chronically ill or infirm persons reside, a polling place shall be provided in such institution or upon the premises, and, for the purpose of polling, the institution shall be deemed to be a polling place and every person resident in the institution who is entered on the polling list shall vote at such polling place.

(2) Where a patient of such a hospital or other institution is bed-ridden or is unable to walk, it is lawful for the deputy returning officer and poll clerk with the candidates or their scrutineers to attend upon such person for the purpose ^{Incapacitated patients}

of receiving his ballot, but no candidate or scrutineer shall be present where the ballot of any such voter is marked under section 73.

(3) When every person whose name is entered on the polling list for a polling place governed by this section has voted the deputy returning officer for the polling place may close the poll.

Compart-
ments for
voters to
mark ballots

50. Every polling place shall be furnished with compartments in which voters may mark their ballots without other persons being able to see how they are marked, and it is the duty of the Clerk and the deputy returning officer respectively to ensure that a sufficient number of compartments is provided at each polling place.

Directions
to voters
to be printed

51. The Clerk shall cause to be printed in conspicuous type a sufficient number of the prescribed directions for the guidance of voters for the purposes of the election, and shall deliver to every deputy returning officer as many of the printed directions, as the Clerk may deem sufficient.

D.R.O.'s to
placard the
directions

52. Every deputy returning officer, before opening the poll, or immediately after he has received the printed directions from the Clerk if they were not received before opening the poll, shall cause them to be placarded outside the polling place, and in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling.

Delivery of
copies of
polling list,
poll book and
other pre-
scribed
material

53. The Clerk shall cause to be delivered to each deputy returning officer, at least 48 hours before the polling day, the polling list, a blank poll book and such other materials as are prescribed.

In municip-
alities not
divided into
polling sub-
divisions,
Clerk to
perform
duties of
deputy
returning
officers

54. In municipalities having no more than one polling subdivision, the Clerk may perform the duties that in other cases are performed by deputy returning officers.

Number of
votes that
may be given
by each voter

55.—(1) A voter is entitled to vote,

- (a) once only for mayor, controller, reeve, deputy reeve;
- (b) where the election is by general vote, once only for as many candidates for any office as there are offices to be filled, and once only for each of them.

(2) Where the municipality is divided into wards a voter shall vote in that ward or polling subdivision in which he resides, and if he does not reside in the municipality, he shall

vote in the ward or polling subdivision in which he is assessed or entitled to be assessed as owner or is the wife or husband of the person so assessed or is entitled to be assessed, and if he is so assessed in more than one ward or polling subdivision, he shall vote in the ward or polling subdivision in which is situate the land owned by him which has the highest assessment of any of the land for which he is assessed or entitled to be assessed pursuant to *The Assessment Act*.

(3) Where the aldermen or councillors are elected by wards, a voter if qualified to vote therein may vote in the ward for as many candidates as there are offices to be filled and once only for each of them.

CERTIFICATES OF OUTSIDE VOTERS

56.—(1) The Clerk, on the written request of a person entitled to vote who has been appointed a deputy returning officer or poll clerk or election assistant or scrutineer at a polling place other than the one at which he is entitled to vote, shall give him a prescribed certificate that he is entitled to vote at the polling place at which he is stationed during the polling day, and the certificate shall bear the date upon which it is signed by the Clerk.

(2) The Clerk shall not give such a certificate until he has ascertained by reference to the polling list that the applicant is entitled to vote, and after giving the certificate he shall forthwith give notice in writing thereof to the deputy returning officer for the polling place at which the applicant appears by the polling list to be entitled to vote, and the person to whom the certificate has been given is not thereafter entitled to vote at such polling place.

(3) The certificate shall designate the polling place at which the person is to be permitted to vote.

(4) The Clerk shall keep a list in which he shall enter before he delivers a certificate under this section,

- (a) the name and residence of the person to whom he gives the certificate;
- (b) the polling place at which the person is authorized to vote under the certificate;
- (c) the polling place at which the person appears by the polling list to be entitled to vote;
- (d) whether the certificate is granted to him as deputy returning officer, poll clerk, election assistant or scrutineer;

(e) if a certificate is refused, the name of the person applying for the certificate with the grounds of refusal;

and the list shall be open to inspection by any candidate, scrutineer, or voter.

Production of certificate

57.—(1) A person who produces a certificate given to him under section 56, is entitled to vote at the polling place designated therein, but the certificate does not entitle him to vote there unless he has been actually engaged there as a deputy returning officer, or poll clerk or election assistant or scrutineer during polling day.

Person receiving a certificate to take oath of qualification

(2) A person who receives a certificate, whether a deputy returning officer, or poll clerk, or election assistant or scrutineer shall not vote until he has taken one or other of the prescribed oaths of qualification.

Before whom oath to be taken

(3) The oath shall be administered to a deputy returning officer by the poll clerk, and to a poll clerk, election assistant or scrutineer by the deputy returning officer.

Persons voting under authority of a certificate

(4) The deputy returning officer shall enter or cause to be entered in the column for remarks in the poll book opposite the name and residence of the person voting under the authority of a certificate, the words "Voted under Certificate".

(5) A person voting under the authority of a certificate shall deliver it to the deputy returning officer before receiving his ballot.

Preservation of certificates

(6) The deputy returning officer shall enclose all such certificates in one envelope.

PRESERVATION OF THE PEACE

Assistance of constables

58. A Clerk or a deputy returning officer may require the assistance of constables and other persons to aid him in maintaining peace and order at the election and may swear in as many constables as he deems necessary.

ADVANCE POLLS

Advance polls

59.—(1) The Saturday and Monday nine days and seven days respectively before polling day shall be the days on which polls shall be held for the purpose of receiving votes of voters who expect to be unable to vote on polling day in the polling subdivisions for which their names appear on the polling lists.

(2) The advance polls shall be open from 10 o'clock in the ^{Time of poll} forenoon until 8 o'clock in the afternoon on each of the two days.

(3) The Clerk shall provide as many polling places as ^{Fixing the} ~~polling~~ ^{places} he deems necessary, fix their location and appoint a deputy returning officer and poll clerk for each polling place.

(4) The Clerk, in fixing the location of the polling places, shall ^{Accessi-} ~~bility to~~ ^{wheel chairs} select, so far as is reasonably possible, premises that afford ^{accessibility to} ~~wheel chairs~~ access to wheel chairs.

(5) Every person offering himself as a voter at the polling ^{Declaration of voter} place shall be required by the deputy returning officer before being allowed to vote to make the prescribed declaration which shall be kept by the deputy returning officer with the other records of the poll.

(6) Forthwith after the close of the poll each day, the deputy ^{List of persons voting} returning officer shall make up and deliver to the Clerk a list of the names of all persons who have voted showing in each case the number of the polling subdivision in which the voter is entered on the polling list.

(7) Upon receiving the list mentioned in subsection 6, the ^{Noting other} ~~deputy~~ ^{returning} ~~officer's~~ ^{lists} Clerk shall,

(a) make an entry in the polling list to be supplied to each deputy returning officer on polling day opposite the name of each voter whose name appears on such list and whose vote has been received at an advance poll, showing that such voter has voted; or

(b) make a certificate in the prescribed form for each polling subdivision, showing the name and address of each voter listed on the polling list for such polling subdivision who has voted at an advance poll, and shall furnish such certificate before the opening of the poll on polling day to the deputy returning officer of the polling subdivision, and the deputy returning officer shall before opening the poll make an entry on the polling list supplied to him, opposite the name of each voter whose name appears on the certificate, showing that such voter has voted.

(8) On the polling day, the deputy returning officer shall, ^{Close of poll} in the presence of such candidates for office at the election and their scrutineers as are present at the hour fixed for the closing of the poll, open the ballot boxes, count the votes and perform all other duties required of deputy returning officers by this Act.

Hours of
polling
generally

60. The polls at every election shall open at 10 o'clock in the forenoon and remain open until 8 o'clock in the afternoon of the same day.

PROCEDURE AT POLL

Attendance
of D.R.O.

61.—(1) The deputy returning officer shall attend at the polling place at least fifteen minutes before the hour fixed for opening the poll.

Counting
ballots before
opening
of poll

(2) During such fifteen minutes and before the opening of the poll, the scrutineers who are entitled to be present in the polling place during polling hours are entitled to have the ballots intended for use thereat counted in their presence and to inspect the ballots and all other papers, forms and documents relating to the poll.

Deputy
returning
officer to
show box
empty to
persons
present and
then lock
and seal it

62. The deputy returning officer shall, immediately before opening the poll, show the ballot box to such persons as are present in the polling place, so that they may see if it is empty, and he shall then lock the box and place his seal upon it in such a manner as to prevent it being opened without breaking the seal, and he shall keep the box on a desk, counter or table or otherwise so that it is raised above the floor in full view of all present, and shall keep the box so locked and sealed until the box is required to be opened for the purpose of counting the votes under section 83.

One voter
only for
each com-
partment

63. Each voter upon entering the room where the poll is held shall declare his name and place of residence, which particulars shall be entered in the poll book by the poll clerk with a consecutive number being prefixed to the name, and not more than one voter shall enter a voting compartment at one time.

Persons on
polling list
to be allowed
to vote on
taking oath
if required

64. Subject to section 56, the deputy returning officer shall not receive the vote of any person whose name is not entered on the polling list, but shall receive the vote of every person whose name is entered thereon and of every such person where required by a candidate or his scrutineer, or by the deputy returning officer, to take any required oath.

When D.R.O.
to swear
voter

65. If a deputy returning officer has reason to believe that a person offering to vote is not a qualified voter or has already voted, or is attempting to vote under a false name or designation or is personating or representing himself falsely as being upon the polling list, the deputy returning officer shall administer the prescribed oath to the voter, whether or not he has been requested to do so.

66. A person who has refused to take an oath when required so to do shall not receive a ballot or vote. Voters refusing to be sworn

67. Every voter shall receive from the deputy returning officer a ballot on the back of which the deputy returning officer has previously put his initials, so placed as indicated thereon that when the ballot is folded they can be seen without opening it. D.R.O. to put initials on back of ballot

68. The deputy returning officer shall, upon the request of the voter, instruct him how to mark and fold his ballot, but without inquiring or seeing for whom he intends to vote, except in the cases provided for by sections 49 and 73. Instructions to voter

69. The voter on receiving his ballot shall forthwith proceed into one of the compartments of the polling place and there mark his ballot with a cross or other mark with a pen or pencil within the circle following the name of the candidate for whom he intends to vote, and shall then fold the ballot so that the initials on the back of it can be seen without opening it, and hand it to the deputy returning officer who shall, without opening it, ascertain by examining his initials that it is the same ballot that he gave to the voter, and shall then, in full view of all present, including the voter, immediately place the ballot in the ballot box. Mode of marking, folding and depositing ballot

70. The poll clerk shall enter in the poll book opposite the name of each voter voting the word "Voted" as soon as the ballot has been deposited in the ballot box, and shall enter in the same book the word "Sworn" or "Affirmed" opposite the name of each voter to whom the oath has been administered, and the words "Refused to be Sworn" or "Refused to Affirm" opposite the name of each voter who has refused to take an oath when he has been required so to do. Entries to be made in poll book as to voters

71. A voter shall vote without undue delay and shall leave the polling place as soon as his ballot has been placed in the ballot box. Voters to leave as soon as possible

72. Subject to provisions of section 73, while a voter is in a compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment or to be in a position from which he can see how the voter marks his ballot paper. Exclusion from balloting compartment

73.—(1) On the application of any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in accordance with the other provisions of this Act, the deputy returning officer shall require the voter making the application to take an oath of his incapacity to Voter incapacitated by blindness, etc.

vote without assistance, and shall thereafter assist the voter by marking his ballot in the manner directed by the voter in the presence of the poll clerk and of no other person, and place the ballot in the ballot box.

Blind voter's
ballot
marked
by friend

(2) The deputy returning officer shall either deal with a blind voter in the manner provided in subsection 1 or, at the request of any blind voter who has taken the prescribed oath and is accompanied by a friend, shall permit the friend to accompany the blind voter into the voting compartment and mark the voter's ballot for him.

Oath of
friend

(3) Any friend who is permitted to mark the ballot of a blind voter under subsection 2 shall first be required to take the prescribed oath that he will keep secret the manner in which the blind voter voted.

May act as
friend once
only

(4) No person shall be allowed to act as the friend of more than one blind voter at any polling place other than a polling place established under section 49.

Entry in
poll book

(5) The deputy returning officer shall enter in the column for remarks in the poll book opposite the voter's name the reason why the ballot was marked by him or by a friend of the voter.

Voters who
cannot
understand
English

74. Where a voter does not understand the English language, an interpreter provided by the voter may be sworn in the prescribed form to translate the necessary oaths as well as any lawful questions necessarily put to the voter and his answers, but in the event of inability to secure an interpreter, the voter shall be refused a ballot.

When person
deemed to
have voted

75. A person whose ballot has been placed in the ballot box by the deputy returning officer shall be deemed to have voted.

Voter not
to take his
ballot from
polling
place, etc.

76. A person who has received a ballot shall not take it out of the polling place, and a person who receives a ballot and leaves the polling place without delivering it to the deputy returning officer, or returns his ballot declining to vote, forfeits his right to vote, and the deputy returning officer shall make an entry in the poll book in the column for remarks to the effect that the person received a ballot but took it out of the polling place or returned it declining to vote, as the case may be, and in the latter case the deputy returning officer shall immediately write the word "Declined" upon the ballot and preserve it to be returned to the Clerk.

77. A voter who has inadvertently dealt with his ballot in such a manner that it cannot be conveniently used, upon returning it to the deputy returning officer, is entitled to obtain another ballot, and the deputy returning officer shall immediately write the word "Cancelled" upon the first-mentioned ballot and preserve it to be returned to the Clerk.

78.—(1) If a person representing himself to be a voter applies for a ballot after another person has voted as such voter, he is entitled to receive a ballot and to vote after taking the prescribed oath and otherwise establishing his identity to the satisfaction of the deputy returning officer.

(2) The name of the voter shall be entered in the poll book and a note shall be made of his having voted on a second ballot and of the fact of the oath having been taken and of any objections made on behalf of any, and of which, of the candidates.

79. The deputy returning officer, the poll clerk, the election assistant, the constable or constables, any candidate or, in his absence, his scrutineer, and no others shall be permitted to remain in the polling place during the time the poll is open or to be in the polling place at the counting of the votes.

80. A candidate is entitled to have one scrutineer only in a polling place at any one time.

81. If by reason of riot or other emergency a nomination meeting or the voting at a polling place is not commenced on the proper day or is interrupted after being commenced and before the lawful closing thereof, the Clerk or deputy returning officer, as the case may be, shall hold or resume the election or polling on the following day at 7 o'clock in the afternoon in the case of a nomination meeting, and at 10 o'clock in the forenoon in the case of a polling or advance polling, and continue the same from day to day, if necessary, until a fair opportunity for nominating candidates has been given or, in the case of polling, until the poll has been opened without interruption and with free access to voters for ten hours in all.

EFFECT OF IRREGULARITIES

82. No election shall be declared invalid,

Irregularities not affecting result

(a) by reason of any irregularity on the part of the Clerk or in any of the proceedings preliminary to the poll;

- (b) by reason of a failure to hold a poll at any place appointed for holding a poll;
- (c) by reason of non-compliance with the provisions of this Act as to the taking of the poll, as to the counting of the votes or as to limitations of time; or
- (d) by reason of any mistake in the use of the prescribed forms,

if it appears to the tribunal having cognizance of the matter that the election was conducted in accordance with the principles of this Act and that the irregularity, failure, non-compliance or mistake did not affect the result of the election.

Duties of
deputy
returning
officer
after close
of poll

83. Immediately after the close of the poll, the deputy returning officer shall place all the cancelled and declined ballots in separate envelopes and seal them, and shall then count the number of voters whose names appear by the poll book to have voted and make an entry thereof on the line immediately below the name of the voter who voted last, thus: "The number of voters who voted at this election in this polling place is (stating the number)", and he shall sign his name thereto; then, in the presence and in full view of the persons entitled to be present, he shall open the ballot box and proceed to count the number of votes for each candidate, giving full opportunity to those present to examine each ballot.

84.—(1) In counting the votes, the deputy returning officer shall reject all ballots,

- (a) that have not been supplied by him; or
- (b) by which votes have been given for more candidates than are to be elected; or
- (c) upon which there is any writing or mark by which the voter can be identified, or that has been so torn, defaced or otherwise dealt with by the voter that he can thereby be identified,

but no word, letter or marks written or made or omitted to be written or made by the deputy returning officer on a ballot voids it or warrants its rejection.

Counting
votes where
ballot relates
to two or
more officers

(2) Where on a ballot that contains the names of candidates for more than one office votes are given for more candidates for any office than are to be elected, the ballot is void as regards all the candidates for such office but is good as

regards the votes for any other offices in respect of which the voter has not voted for more candidates than are to be elected.

(3) Where on a composite ballot,

Composite
ballots

- (a) votes are given for more candidates for any office than are to be elected; or
- (b) votes are given for the affirmative and negative on any by-law or question,

the vote is void as regards the candidates for such office or as regards the by-law or question, as the case may be, but does not affect the votes for any other offices, by-laws or questions in respect of which a vote is correctly indicated.

85.—(1) The deputy returning officer shall make a note of every objection taken to a ballot by a candidate or his scrutineer and shall decide the objection subject to review on recount or in a proceeding questioning the validity of the election.

(2) Each objection shall be numbered and a corresponding number shall be placed on the back of the ballot and initialled by the deputy returning officer.

86.—(1) All the ballots except those rejected shall be counted, and an account shall be kept of the number of votes given and allowed for each candidate, and all the ballots shall be put into separate packets as follows:

- (a) all the used ballots that have not been objected to and have been counted;
- (b) all the used ballots that have been objected to, but which have been counted;
- (c) all the rejected ballots;
- (d) all the cancelled ballots;
- (e) all the ballots used but unmarked;
- (f) all the declined ballots;
- (g) all the unused ballots.

(2) Every packet shall be endorsed so as to indicate its contents, and shall be sealed by the deputy returning officer, and any candidate or scrutineer present may write his name on the packet.

Statement of result to be made by deputy 87.—(1) The deputy returning officer shall make out a statement in duplicate of,

- (a) the number of ballots received from the Clerk;
- (b) the number of votes given for each candidate;
- (c) the used ballots that have not been objected to and have been counted;
- (d) the ballots that have been objected to, but which have been counted;
- (e) the rejected ballots;
- (f) the cancelled ballots;
- (g) the ballots used but unmarked;
- (h) the declined ballots;
- (i) the unused ballots;
- (j) the number of voters whose ballots have been marked by the deputy returning officer under sections 49 and 73.

Disposal of statement

(2) One statement shall be attached to the poll book and the other shall be delivered to the Clerk.

Signing of statement

(3) The statement shall be signed by the deputy returning officer and the poll clerk and such of the candidates or their scrutineers as are present and desire to sign it.

(4) The deputy returning officer shall deliver to such of the candidates or their scrutineers as are present, if requested to do so, a certificate of the number of ballots counted for each candidate, and of the rejected ballots.

Oath of poll clerk

88. The poll clerk, immediately after the completion of the counting of the votes, shall take and subscribe the prescribed oath.

Poll book, etc., to be placed in ballot box

89.—(1) The poll book, the polling list, the packets containing the ballots, and all other documents that served at the election shall be placed in the ballot box, except,

- (a) the duplicate statement;
- (b) the oath of the deputy returning officer;

(c) the oath of the poll clerk;

(d) the oath of the person, if any, chosen to deliver the ballot box to the Clerk or assistant returning officer.

(2) Where the documents referred to in subsection 1 are in error placed in the ballot box or where the statement cannot be interpreted by the Clerk or assistant returning officer, he may open such ballot box or boxes in the presence of the deputy returning officer concerned and, after having recovered or ascertained the meaning of the statement, as the case may be, the box shall be resealed by the deputy returning officer in the presence of the Clerk.

90.—(1) The deputy returning officer shall then lock and seal the ballot box and forthwith deliver it and the documents referred to in section 89 personally to the Clerk or assistant returning officer, and, if he is unable to do so owing to illness or other cause, he shall deliver it to the poll clerk, or, where the poll clerk is unable to act, to some person chosen by the deputy returning officer for the purpose of delivering it to the Clerk or assistant returning officer, and shall thereon, or on a ticket attached thereto, write the name of the person to whom the box was delivered, and shall take a receipt therefor, and the poll clerk or person so chosen shall forthwith personally deliver the ballot box to the Clerk or assistant returning officer and shall take before him the prescribed oath.

(2) The candidates, or their scrutineers, are entitled to be present when the ballot box is delivered pursuant to sub-section 1.

91. The Clerk or assistant returning officer, upon the receipt of a ballot box, and the documents referred to in section 89, shall take every precaution for their safe keeping and for preventing any other person from having access to them, and shall immediately on receipt of the ballot box seal it with his own seal in such a way that it cannot be opened without his seal being broken, and that any other seals affixed to it are not effaced or covered.

92. A deputy returning officer in an urban municipality shall not under any circumstances take, or allow to be taken, the ballot box to his home, house, office or place of business, or to any house or place except the office of the Clerk or of the assistant returning officer, as the case may be.

93. The Clerk, after he has received the ballot boxes and other documents referred to in section 89, including the duplicate statements of the number of votes given by

Opening of
box where
documents
placed in
box in error

Ballot box
to be
delivered
to clerk

Right of
candidates,
etc., to be
present

Duties of
clerk as to
ballot box

Urban D.R.O.
not to take
ballot box
to his home

Clerk to
cast up votes
and declare
what
candidates
elected

each polling place, without opening any of the ballot boxes, shall cast up from such duplicate statements the number of votes for each candidate and at the town hall or, if there is no town hall, at the Clerk's office at noon on the Wednesday following the day on which the polling is held, shall publicly declare to be elected the candidate or candidates having the highest number of votes, and he shall also put up in some conspicuous place a statement under his hand showing the number of votes for each candidate.

Tie vote,
recount
necessary

94.—(1) If upon the casting up of the votes, two or more candidates have an equal number of votes where both or all of such candidates cannot be elected, the Clerk shall publicly declare the result and put up in a conspicuous place a statement showing the number of votes for each candidate and shall forthwith notify a judge of the county or district court of the county or district in which the municipality is situate of the result and the judge shall thereupon appoint a time and place to recount the votes cast for such candidates.

Procedure

(2) In such proceedings, sections 98 to 102 apply *mutatis mutandis*.

95.—(1) If a deputy returning officer has not delivered the statement of the ballots counted by him as required by this Act, the Clerk shall open the appropriate ballot box for the purpose of counting the vote.

(2) If the necessary ballot box is not returned as required by this Act, or if for any other cause, the Clerk cannot, at the day and hour appointed by him for adding up the votes, ascertain the number of votes given for each candidate, he may adjourn to a future day and hour the adding up of the votes and so on from time to time, such adjournment or adjournments not in the aggregate to exceed fourteen days.

Lost ballot
boxes

(3) If any of the ballot boxes have been destroyed or lost, or for any other reason, are not forthcoming by the time fixed for adding up the votes, the Clerk shall ascertain the cause and, if the statements and certificates, or any of them or copies of them, cannot be procured, the Clerk shall ascertain by such evidence as he is able to obtain, the total number of votes given for each candidate at the several polling places, and may summon any deputy returning officer, poll clerk, election assistant or other person to appear before him at a time and place to be named by him and the Clerk shall notify the candidate of the intended proceedings and may examine on oath such deputy returning officer, poll clerk, election assistant or other person respecting the matter in question.

96.—(1) In this section and in sections 97 to 100 “judge” Recount means a judge of the county or district court.

(2) If, within fourteen days after the declaration by the Clerk of the result of the election, upon an application of a candidate or voter it is made to appear by affidavit to a judge that the votes have been improperly counted or any ballot paper has been improperly rejected or that an incorrect statement of the number of ballots cast for any candidate has been made or that the votes have been improperly added up, and if within that time the applicant has given security for the costs in connection with the recount or final addition of the candidate declared elected in the amount of \$100.00 cash, or if at any time within four weeks after such declaration in a local municipality the council has by resolution declared that a recount or re-addition is desirable in the public interest, the judge shall appoint a time and place to recount or re-add the votes cast at the election.

(3) At least two days notice in writing of the time and place appointed shall be given to the candidates and to the Clerk and the assistant returning officer, if any, and the Clerk or an assistant clerk appointed for the purpose and the assistant returning officer shall attend the recount or re-addition with the ballot boxes and all documents relating to the election.

Notice to
time and
place of
recount

(4) The judge, the Clerk, the assistant clerk, and the assistant returning officer and each candidate and his scrutineer appointed to attend the recount or re-addition, but no other person, except with the approval of the judge, is entitled to be present at the recount.

(5) The recount shall be of the ballots cast respectively for the candidate declared elected when one only is to be elected or in other cases for the candidate who received the lowest number of votes of those declared elected by the Clerk and for the defeated candidate who received the highest number of votes for the same office unless any other candidate in writing requires the ballots cast for him to be recounted or the votes cast for him to be re-added.

(6) At the time and place appointed, and in the presence of such of the persons entitled to be present as may attend, the judge shall make such final addition from the statements returned by the deputy returning officers, or recount all the ballots received by the Clerk from the several deputy returning officers and the number of votes counted at the election and shall for the purposes of the recount open the sealed packets containing the used ballots that were not objected to

and were counted, the ballots that were objected to but which were counted, the rejected ballots, the cancelled ballots, the ballots that were used but were unmarked, the declined ballots and the unused ballots.

(7) Subject to subsection 8, the judge shall proceed according to the provisions for the counting of the ballots and the vote at the close of the poll by a deputy returning officer, and shall verify and correct the statement of the poll.

(8) If for any reason it appears desirable to do so the judge upon the application of any party to the proceeding may hear such evidence as he may deem necessary for the purpose of making a full and proper recount of the ballots, and without restricting the generality of the foregoing, he may, if the recount or re-addition results in any of the candidates for any office being declared to have received the same number of votes as any other candidate or candidates, whether or not such candidate or candidates were parties to the recount, hear such evidence as he may deem necessary to determine who was elected to that office.

(9) Upon the completion of the recount, all the ballots shall be sealed in their separate packets and upon completion of re-addition the original statements shall be sealed in their respective packets and the judge shall forthwith certify the result of the recount or re-addition to the Clerk.

(10) Upon the result of the recount or re-addition being ascertained under subsections 7 and 8, the Clerk shall declare elected the candidate or candidates ascertained as having the greatest number of votes, and such declaration shall be deemed for all purposes to have been substituted for the prior declaration made under section 93 if it is different from such prior declaration.

97. The judge may require the Clerk of the county or district court to be present at the time and place appointed.

98.—(1) The judge shall delay sending his certificate to the Clerk for two days after the completion of the recount or final addition in order to allow for an appeal as provided in section 101.

(2) If no notice of appeal is given to the judge within two days after the completion of the recount or his final addition, the judge shall certify forthwith the result to the Clerk who shall then declare the candidate having the greatest number of votes to be elected.

99. In the case of an equality of votes for any office for which one person only is to be elected, the results shall be determined by lot conducted by the Clerk.

100.—(1) The costs of the recount are in the discretion of the judge who may order by whom, to whom and in what manner the costs shall be paid.

(2) The judge may in his discretion award costs of the recount or re-addition to or against any candidate and may fix the amount thereof or order that they be taxed by the Clerk of the district or county court on a scale following as nearly as may be the tariff of costs of the county court.

(3) Where the judge makes no provision as to the costs, the disbursements made or authorized to be made by the Clerk shall be paid by the municipality at the prescribed rates.

(4) Where costs are directed to be paid by the applicant, the money deposited as security for costs shall be paid out to the party entitled to such costs, so far as necessary.

(5) Payment of the costs may be enforced by execution to be issued from any county or district court, upon filing therein the order of the judge and a certificate showing the amount at which the costs were taxed and an affidavit of the non-payment of them.

(6) The judge is entitled to receive from the municipality the expenses necessarily incurred in attending at the place designated by him for the recount or re-addition.

APPEAL FROM DECISION ON RECOUNT OR FINAL ADDITION

101.—(1) Any party may appeal from the decision of the judge who conducted the recount or final addition by giving notice in writing within two days after the completion of the recount or final addition to the opposite party and to the judge of his intention to appeal, and he may by the notice limit the appeal to specified ballots.

(2) The notice may be served upon the opposite party personally, or as a judge of the Supreme Court may direct.

(3) Where the appeal is limited, the judge who conducted the recount or final addition shall cause to be sealed the ballots that are the subject of appeal in a separate packet and shall forward them, together with the notice and a certificate showing his findings as to the ballots in dispute, by regis-

tered mail to the Registrar of the Supreme Court, but, if the appeal is not limited, the judge shall forward all the ballots and other papers to the Registrar, and in either case he shall await the result of the appeal before sending his certificate to the Clerk.

Allowing
copy of
certificate
of judge

(4) The judge who conducted the recount or final addition shall, upon request, provide each party with a copy of the certificate of his findings before it is forwarded to the Registrar.

Appointment
for hearing
of appeal

(5) On receipt of the ballots and notice, the Registrar shall forthwith obtain an appointment from a judge of the Supreme Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed.

Procedure
on hearing
of appeal;
certificate
of result

(6) At the time appointed, the judge of the Supreme Court shall recount the ballots or such of them as are the subject of appeal, or review the final addition, as the case may be, and shall forthwith certify his decision to the judge who conducted the recount or final addition, whose duty it is to conform to the decision and to certify the result without delay to the Clerk.

Costs of
appeal

(7) The judge of the Supreme Court may direct by and to whom, the costs of the appeal shall be paid.

Idem

(8) Where the judge of the Supreme Court makes no provision as to costs, the disbursements made or authorized to be made by the Clerk, shall be paid by the municipality at the prescribed rates.

Ballots,
how disposed
of

102.—(1) The Clerk shall retain in his possession for eight weeks all the ballots and, unless otherwise directed by an order of a judge or officer having jurisdiction to inquire as to the validity of the election, shall then destroy them in the presence of two witnesses, who shall make a declaration that they witnessed the destruction of them.

Declaration

(2) The declaration shall be made before the head of the municipality and filed in the office of the Clerk.

Disposal of
documents
relating to
election

(3) Subject to subsection 1, the Clerk shall retain in his possession all oaths, nominations, qualification documents, statements of the votes cast, and other documents relating to an election until the successors to the persons elected at such election have taken office, and may then destroy them.

Ballots to be
inspected
only by order
of a judge

103.—(1) No person shall be allowed to inspect any ballot in the custody of the Clerk except under the order of a judge.

(2) The order may be made on the judge being satisfied by affidavit or other evidence that the inspection is required for the purpose of maintaining a prosecution for an offence, or a corrupt practice, or of taking proceedings for contesting the election or return.

(3) The order may be made subject to such conditions as the judge may deem proper.

104. Where an order is made for the production by the Clerk of any document in his possession relating to an election, the production of it by him in such manner as may be directed by the order is evidence that the document relates to the election, and any endorsement appearing on any packet of ballots so produced is evidence that the contents are what they are stated to be by the endorsement.

VACANCIES IN COUNCIL

105. The seat of a member of a council becomes vacant if he,

- (a) is undergoing imprisonment under sentence for a criminal offence; or
- (b) has been found guilty of having committed a corrupt practice at the election; or
- (c) absents himself from the meetings of the council for three successive months without being authorized so to do by a resolution of the council entered upon its minutes; or
- (d) files his resignation with the clerk of the municipality as provided in section 106 or subsection 2 of section 108 for the purpose of becoming a candidate for council in some other office; or
- (e) is appointed to fill a vacancy in the office of mayor, reeve or deputy reeve; or
- (f) is appointed to fill a vacancy in the board of control.

106. Except in the cases provided for by section 105, if a member of a council forfeits his seat or his right to it or becomes disqualified to hold it and does not forthwith resign his seat, proceedings may be taken under sections 120 to 144 to declare it vacant.

107.—(1) The warden of a county may resign his office by notice in writing filed with the county clerk.

Vacancy in
office of
warden, how
filled

(2) Where from any cause a vacancy occurs in the office of warden when the council is not in session, the clerk shall forthwith notify the members of the vacancy and, if required in writing so to do by a majority of them, he shall call a special meeting of the council to fill the vacancy.

When new
election to
be held

108.—(1) Except as specifically provided in any special or general Act, a new election shall be held in a year which is not an election year where,

- (a) a person elected has neglected or refused to accept office or to make the prescribed declarations within the prescribed time; or
- (b) a vacancy in the office of alderman or councillor occurs from any cause; or
- (c) an election is ordered in a judicial proceeding; or
- (d) where it is required by reason of the provisions of section 38 or section 39.

(2) Where an election has been ordered in a judicial proceeding for the office of mayor, reeve, deputy reeve or controller, no member of council is eligible to be nominated for any of the offices of mayor, reeve, deputy reeve or controller unless he has, before the first day of the period during which nominations are received, filed his resignation from the office that he then holds with the Clerk and the Clerk shall not place on the ballots the name of any such person as a candidate for the other office who fails to file such resignation in the time aforesaid notwithstanding that his nomination is otherwise in accordance with the provisions of section 34.

(3) The new election shall be held and shall be conducted as any other election under this Part.

109. A new election shall be held in an election year only where an election has been ordered in a judicial proceeding.

110.—(1) Unless an election has been ordered in a judicial proceeding a new election shall not be held where any vacancy occurs in a council of a municipality in an election year but the council at a meeting called for that purpose shall appoint a person who has consented to accept office if appointed, and

- (a) in the case of the office of councillor or alderman the person may be any person qualified to be elected a member of council; and

(b) in the case of the office of mayor, reeve, deputy reeve or controller, the person shall be a member of the council on the date of the vacancy.

(2) If more than one person is nominated a vote of the members of council shall be taken by the clerk at a regular or special meeting at which more than one-half of its members are present at the time of the vote.

(3) The person nominated for whom more than one-half the number of all members of council vote shall fill the vacancy for which the election by council was held.

(4) Where the candidate receiving the greatest number of votes cast does not receive more than one-half the votes of all members of council, the candidate who received the fewest number of votes shall be ineligible for election at that meeting and the vote shall be taken again by the clerk, and if necessary more than once until the candidate receiving the greatest number of votes has also received more than one-half the votes of the members of council, but when the votes are cast when only two candidates remain if no candidate receives more than one-half the votes of the members of council present and voting, and a tie results, the tie shall be broken and a candidate elected by lot conducted by the clerk.

(5) The person elected shall hold office for the remainder of the term for which the person whose place he is elected to fill was elected. Term of office of members elected

111.—(1) Where a new election is to be held under the authority of section 108 or section 109, the Clerk shall set the date of the nomination day which shall be not earlier than 10 days but within 21 days of the day on which the office is declared vacant.

(2) The procedure for filing nominations at the new election shall be the procedures applicable at the last regular election of the municipality and the period for filing nominations shall be the 10 days next preceding nomination day.

(3) The polling required by this section shall so far as possible be held and take place at the places at which the polling took place at the last election. Where nomination and polling to take place

(4) The polling list to be used at a new election is the polling list used at the last election and to which has been added by the Clerk by any means authorized by this Act the names of other persons who since the date of the last election have become electors.

(5) An elected member of any local board, or a trustee of a police village within the municipality, is ineligible as a candidate at any new election authorized by section 108 unless he has before the first day of the period during which nominations are received, filed with the Clerk a certified copy of his resignation from the office that he then holds with evidence satisfactory to the Clerk that such resignation has been filed as required by legislation governing the local board.

Majority of council may hold meeting **112.** Notwithstanding that a new election becomes necessary, meetings of the council may be held if a majority of the full number of the council is present.

PENALTY PROVISIONS

113. Every person who,

- (a) not being qualified to vote, votes; or
- (b) being qualified to vote, votes more than once at an election; or
- (c) at an election applies for a ballot in the name of some other person whether that name be that of a person living or dead, or of a fictitious person, or who votes in a polling subdivision other than the one in which he is entitled to vote by this Act,

is guilty of an offence and of a corrupt practice, and on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00) or to be imprisoned for a term of not more than six months, or to both such fine and imprisonment.

114.—(1) Every deputy returning officer or poll clerk who wilfully miscounts the ballots or otherwise wilfully makes up a false statement of the poll is guilty of an offence and of a corrupt practice and on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00) or to be imprisoned for a term of not more than six months, or to both such fine and imprisonment.

(2) Every Clerk, deputy returning officer or poll clerk who refuses or neglects to perform any of the duties imposed upon him by this Act, is guilty of an offence and, on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00).

(3) Every Clerk, deputy returning officer or other person whose duty it is to deliver poll books or who has the custody of a certified list of voters or of a polling list or poll book, who wilfully makes any improper alteration or insertion in or omission from or in any way wilfully falsifies such list of voters, polling list or poll book is guilty of an offence and of a corrupt practice and on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00) or to be imprisoned for a term of not more than six months, or to both such fine and imprisonment.

115. Every person who,

- (a) alters, defaces or destroys a ballot or the initials of the deputy returning officer thereon;
- (b) without authority, supplies a ballot to any person;
- (c) places in a ballot box a paper other than the ballot that he is authorized by law to place therein;
- (d) delivers to the deputy returning officer to be placed in the ballot box any other paper than the ballot given to him by the deputy returning officer;
- (e) takes a ballot out of the polling place;
- (f) without authority, destroys, takes, opens or otherwise interferes with a ballot box or books or packet of ballots or a ballot in use or used for the purpose of an election;
- (g) being a deputy returning officer, contravenes section 116 or knowingly puts his initials on the back of any paper purporting to be or capable of being used as a ballot at an election;
- (h) not being a person authorized by the Clerk, prints any ballot or what purports to be or is capable of being used as a ballot at an election;
- (i) being authorized by the Clerk to print the ballots for an election, prints more ballots than he is authorized to print; or
- (j) attempts to commit any offence mentioned in this section,

is guilty of an offence and of a corrupt practice and on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00), or to be imprisoned for a term of not more than six months, or to both such fine and imprisonment.

116. Every person, unless authorized by this Act, who wilfully destroys, injures or obliterates, or causes to be destroyed, injured or obliterated, a poll book, list of electors, polling list, certificate or affidavit, or other document or paper made, prepared or drawn according to or for the purpose of meeting the requirements of this Act, or any of them, is guilty of an offence and of a corrupt practice and on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00), or to be imprisoned for a term of not more than six months, or to both such fine and imprisonment.

117. Any person, who knowingly furnishes false or misleading information to any person who by this Act is authorized to obtain information is guilty of an offence and of a corrupt practice and on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00), or to be imprisoned for a term of not more than six months, or to both such fine and imprisonment.

118.—(1) Every person who,

- (a) commits or aids, abets, counsels, commissions or condones the commission by others of the activities described as corrupt practices in this Part;
- (b) (i) directly or indirectly, himself, or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration or promises to procure or to endeavour to procure any money or valuable consideration to or for a voter, or to or for any person in order to induce a voter to vote or refrain from voting, or corruptly does any such act on account of a voter having voted or refrained from voting at an election,
- (ii) directly or indirectly, himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place or employment, or promises to procure or to endeavour to procure any office, place or employment to or for a voter,

or to or for any other person in order to induce a voter to vote or refrain from voting, or corruptly does any such act on account of a voter having voted or refrained from voting at an election,

- (iii) directly or indirectly, himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement, to or for a person in order to induce such person to procure or endeavour to procure the return of any candidate or the vote of any voter at an election,
- (iv) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, or promises or endeavours to procure the return of any candidate or the vote of any voter at an election,
- (v) advances or pays, or causes to be paid, money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in corrupt practices at an election, or knowingly pays or causes to be paid money to a person in discharge or repayment of money wholly or in part expended in corrupt practices at an election,
- (vi) directly or indirectly, himself or by any other person on his behalf, on account of and as payment for voting or for his having voted, or for illegally agreeing or having agreed to vote for a candidate at an election, or on account of and as payment for his having illegally assisted or agreed to assist a candidate at an election, applies to such candidate or to his scrutineer for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration, or for any office, place or employment, or the promise of any office, place or employment,
- (vii) before or during an election, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place, or employment for himself, or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at an election,

- (viii) after an election, directly or indirectly himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or for having induced any other person to vote or refrain from voting at an election,
- (ix) in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure, or endeavours to procure any office, place or employment for such person, or for any other person, or
- (c) induces or procures any person to vote knowing that that person has no right to vote; or
- (d) before or during an election knowingly publishes a false statement of the withdrawal of a candidate,

is guilty of an offence and of a corrupt practice, and on summary conviction is liable to a fine of not more than One Thousand Dollars (\$1,000.00), or to be imprisoned for a term of not more than six months or to both such fine and imprisonment.

Personal expenses of candidate

(2) The actual personal expenses of a candidate, his reasonable expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising and other lawful and reasonable expenses in connection with the election, incurred by the candidate, or any person authorized by him in writing in good faith and without any corrupt intent, shall be deemed to be expenses lawfully incurred, and the payment thereof is not a contravention of this Act.

119. Every person who contravenes any of the provisions of this Act for which contravention no penalty is otherwise provided is guilty of an offence and liable on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00).

PROCEEDINGS TO DECLARE SEAT VACANT

120.—(1) The validity of the election of any person to any office governed by the procedure provided by this Act or his right to hold his seat whether by reason of qualification

or any other reason or the right of a local municipality to a deputy reeve may be tried and determined by a judge of the county or district court of the county or district in which the municipality is situate.

(2) Where the right of a municipality to a deputy reeve is contested, any municipal elector in the county or, where the validity of the election is contested, any candidate at the election or an elector who gave or tendered his vote at it, or where the election was by acclamation, or the right to sit is contested on the ground that the member has become disqualified or has forfeited his seat since his election, an elector may be the applicant for the determination.

121.—(1) Any person authorized by section 120 to make the application may serve a notice of motion as hereinafter provided to determine the matter.

(2) The notice of motion shall be filed and served within six weeks after the election or within thirty days after acceptance of office, and shall be accompanied by an affidavit of the applicant deposing to the facts relied upon in support of the motion.

(3) The notice of motion and affidavits in support thereof shall be filed in the proper office of the county or district court in which the election was held and a cash deposit of One Thousand Dollars (\$1,000.00), or other valuable security acceptable to the judge, shall be paid into court in accordance with the rules as security for costs.

122. The applicant in his notice of motion shall set forth his name in full, his occupation and place of residence, and the interest that he has in the election, whether as candidate or as an elector, and shall state specifically under distinct heads all the grounds of objection to the validity of the election complained of, and in favour of the validity of the election of himself or of any other person where the applicant claims that he or that such person was duly elected, or the grounds of forfeiture or disqualification, as the case may be and where oral evidence is to be taken, the applicant shall name in the notice the witnesses whom he proposes to examine.

123. The notice of motion and affidavits in support thereof shall be served not less than seven clear days before the day on which the motion is returnable, and shall be served personally unless the person to be served avoids personal service in which case an order may be made for substitutional service.

124. Where the applicant alleges that he or some other person was duly elected, the motion shall be to try the validity of the election complained of and of the alleged election of the applicant or other person.

125. Where the grounds of objection apply to two or more persons elected or sitting as members of a council, the applicant may proceed by one motion against all of them.

126. On the hearing of the motion, the applicant shall not be allowed to object to the election of the person complained of or to support the election of himself or of any person alleged to have been duly elected or to attack the right of any member to sit on any ground not specified in the notice of motion; but the judge may entertain any substantial ground of objection to or in support of the validity of the election of either or any of the parties that may appear in evidence before him.

127. Where more motions than one are made to try the validity of the election, or the right to sit of the same person, all of them shall be made returnable and, unless otherwise directed by a judge of the Supreme Court, shall be heard and determined by the judge before whom the motion, notice of which was first served, is returnable, and one order upon all or a separate order upon one or more of them may be made, as he may deem proper.

128. The judge may require the Clerk of any municipality to produce before him or to forward under seal to the clerk of the county or district court for the purpose of production, such assessment rolls, ballots, books, polling lists and other lists, and other records of the election and papers in his hands connected with or relating to it as the judge may deem proper.

129. The judge, at any stage of the proceedings, may,

- (a) add the Clerk or any deputy returning officer or other persons as a party or parties to the proceedings; and
- (b) allow any person entitled to be an applicant to intervene and prosecute, or to defend, and may grant a reasonable time for that purpose.

130. An intervening party is liable for or entitled to costs as any other party to the proceedings.

131.—(1) The judge shall, in a summary manner, without formal pleadings, hear and determine the questions raised by or upon the motion, and, subject to subsection 2, may inquire into the facts on affidavit, by oral testimony or by either of those means.

(2) Where, either on the hearing of a motion under this Part or otherwise, it is alleged that any person is guilty of an offence and of a corrupt practice as described in sections 113 to 119, and that the result of the election was thereby affected, the proceedings to determine the matter shall be those provided by *The Controverted Elections Act*, and not those provided by this Part.

132.—(1) Where a candidate at an election is convicted of committing a corrupt practice, the candidate is ineligible to stand as a candidate at any election up to and including the next election, or to hold any office at the nomination of the Crown or Lieutenant Governor or the Municipal Council during that period, and if he has been elected, his election is void.

(2) If when the candidate is convicted of committing a corrupt practice the presiding judge finds that the act constituting in law a corrupt practice was committed without any corrupt intent, the candidate is not subject to the penalties and disabilities provided by subsection 1.

133. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules regulating the practice and procedure in relation to proceedings under this Part, including the costs of and incidental to them, and as to matters not provided for in this Part, or by rules of court, the practice and procedure of the Supreme Court shall be applicable.

134. Proceedings for the removal from office of a person whose election is alleged to have been undue or illegal, or who is alleged not to have been duly elected, whether or not the seat is claimed by or on behalf of the applicant or any other person, and proceedings to have the right of a person to sit in a council determined shall be had and taken under the provisions of this Part and not by *quo warranto* proceedings or by an action in any court.

135.—(1) Where the election complained of is adjudged to be invalid, the order shall provide that the person found not to have been duly elected be removed from the office and, if it is determined that any other person was duly elected, that he be admitted forthwith to the office.

If election
invalid, order
of removal
of person
not duly
elected, etc.

Order for
new election

(2) Where it is determined that no other person was duly elected, or that a person duly elected has become disqualified or has forfeited his seat, the order shall provide for the removal from office of such last-mentioned person and for the holding of a new election in accordance with the provisions of section 111.

Order for
new election
to be
directed
to clerk

136. Where the election of all the members of a council is adjudged to be invalid, or where it is determined that all of them have become disqualified or have forfeited their seats, the order for their removal, and for the election of new members in their places or for the admission of others adjudged to be legally elected, and for an election to fill the remaining seats in the council, shall be directed to the clerk of the municipality who shall proceed forthwith in accordance with the provisions of section 111.

137.—(1) Where an election is adjudged to be invalid owing to the improper refusal of the Clerk, or the assistant returning officer, or of a deputy returning officer to receive a ballot tendered by or to give a ballot to a voter, or owing to such officer having put into the ballot box a ballot that was not lawfully received from a voter, the judge may order that the costs of the proceedings to unseat the person declared elected, or any part of them, be paid by such Clerk, or assistant returning officer, or deputy returning officer.

(2) Nothing in this section affects any right of action against the Clerk, or assistant returning officer, or deputy returning officer or relieves him from any penalty to which he may be liable under this or any other Act.

138.—(1) After the adjudication, an order shall be drawn up, stating concisely the ground and effect of the decision.

(2) The order may be at any time amended by the judge in any matter of form, and has the same force and effect as a writ of mandamus formerly had in the like case.

139. The judge forthwith after rendering his decision shall return the same with all things had before him touching the proceeding to the proper officer of the court, there to remain of record as a judgment of the court, and the judgment may be enforced for the costs awarded by payment out of court from the cash or other security deposited and by execution and in other respects in the same manner as an order of mandamus.

140.—(1) An appeal lies from the decision or order of a judge of a county or district court to a judge of the Supreme Court.

(2) The practice and procedure on and in relation to the appeal shall be the same, as nearly as may be, as in the case of an appeal from a decision of the master in an action or proceeding in the Supreme Court.

141.—(1) A candidate elected who is found to have been guilty of bribery, or of a corrupt practice, forfeits his seat, and is ineligible as a candidate at any election for two years thereafter.

Dis-
qualification
of candidate
guilty of
corrupt
practice

(2) The judge shall report to the Clerk of the municipality in which the offence was committed the name of every candidate who has been so found guilty, and the Clerk shall enter the name in a book to be kept for that purpose.

142. Any person elected may at any time after the election, and before it is complained of, deliver to the clerk of the municipality a disclaimer, signed by him, to the following effect:

“I, A.B., hereby disclaim all right to the office of.....

for the.....of.....,

in the county (or district) of.....,
and all defence of any right I may have to the same.

Dated..... day of....., 19....

A.B.”

143. A person whose election is complained of, unless it is complained of on the ground of bribery or corrupt practices on his part, or a person whose seat is attacked on the ground that he has become disqualified or has forfeited his seat, may, within one week after service on him of the notice of motion, transmit by registered mail, or deliver to the judge of that court, and to the applicant or his solicitor, a disclaimer signed by him to the following effect:

“I, A.B., upon whom a notice of motion, authorized by this Part has been served for the purpose of contesting my right to the office of.....for the.....

of....., in the county (or district)

of....., hereby disclaim the office,
and all defence of any right I may have to the same.

Dated..... day of....., 19....

A.B.”

144.—(1) A person disclaiming shall deliver a duplicate of his disclaimer to the clerk of the municipality, and the clerk shall forthwith communicate it to the council.

Disclaimer
as
resignation

(2) A disclaimer in accordance with section 142 or 143 operates as a resignation.

(3) A disclaimer in accordance with section 142 relieves the person making it from all liability for costs.

Regulation

145. The Minister may make regulations,

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing the fees and expenses to be allowed to election officials and other persons appointed to assist in the conduct and management of an election for their services and disbursements under this Act;
- (c) prescribing the costs that shall be paid by a municipality pursuant to subsection 3 of section 100.

Repeal

146. The following Acts are repealed:

Schedule II

1. All the statutes mentioned in paragraph 3 (xii) of the Recommendations must be thoroughly examined. The Committee is conscious of the need for revision of these statutes, and now that the preparation of a proposed new revision of Part III is complete a comprehensive study and preparation of concomitant amendments can proceed.

2. LIQUOR LICENCE ACT

It is evident that the introduction of the new Part III into *The Municipal Act* will require decisions of the Legislature relating to local option votes under *The Liquor Licence Act*. The two pieces of legislation cannot work together in their present form without creating confusion and possible litigation.

The following references are to sections of *The Liquor Licence Act* and illustrate certain problems created by recommended changes in Part III.

Section 72 (1):

When the council submits to a vote the questions listed in this section, and in section 73 it submits the questions to "persons qualified to be entered on the voters' list and to vote at elections to the assembly in the municipality". Because of recommendations for amendments to Part III of *The Municipal Act* to provide for biennial elections and for enumeration at the beginning of October in an election year, amendments will have to be made to the "qualified" phrase. If a vote under this Act is to be held only on a municipal election day (every two years) then the polling list for the municipal election will be used for *The Liquor Licence Act* vote. If a vote were to be held on a day other than election day, the list to be used would be one prepared by the Clerk pursuant to powers given him in the proposed Part III, sub-section 4 of section 111.

Section 72 (2):

This section allows a certain number of people to initiate a vote. It is suggested that the petition principle be retained but that the minimum number required to force council to act should be reduced from 25% of voters qualified to vote for a Member of the Legislative Assembly, to the lesser of either 10% of those qualified to vote at municipal elections or 100 of those qualified to vote. It would be

provided that the certificate of the Clerk as to the sufficiency of any petition shall be final. It is suggested that a petition properly prepared and presented should continue to require action by the council but it is also suggested that council should not have to submit the resulting question to the electorate until the next regular election day. It is possible, of course, for council to initiate a liquor vote and it is suggested that amendments permit council to submit the question to the vote of the electorate at any time where it chooses.

Section 75:

With biennial elections proposed by Part III of *The Municipal Act* it would be desirable to change the three year limit on a subsequent vote to two years.

Section 76:

The principle of the appointment of representatives for each side of the question to be voted on is an accepted principle in Ontario municipal legislation. Section 259 of *The Municipal Act* is similar to this section although the technique is somewhat different. These two sections can continue to exist together subject to minor changes in phraseology.

Section 79 (1):

This section provides that the provisions of *The Election Act* and *The Voters' Lists Act* apply to liquor votes. All that is necessary is to make reference to those Parts of the redrafted Municipal Act which are assigned Part numbers and which apply to the voting process. Those numbered Parts will encompass all the matters now referred to in sub-section 1 of this section and the balance of this section can be amended to follow this subsection.

Section 80:

The provisions of subsections (1) and (2) respecting revisions of lists will not be needed, partly because of section 79 (1), and partly because the Legislature has eliminated the election board from the provisions of *The Election Act, 1968-69*.

Section 80 (3):

This subsection, providing for the distribution of polling lists, can be retained with changes to refer to the Clerk and subject to the retention of representatives of opposing sides.

Section 81:

This subject (fees and expenses) will be covered by the proposed new Part III of *The Municipal Act*.

Section 82:

Subsection 1, establishing the Clerk as returning officer, will be unnecessary because of the proposed new Part III of *The Municipal Act*,

but subsection 2 will have to be altered if the requirement for publication of the result of the vote in the Ontario Gazette is retained. If it is not, then the Clerk can simply announce the result.

Section 83:

This section, dealing with the validity of the vote, is unnecessary because all the provisions of all the Parts of *The Municipal Act* relating to elections will be applicable to this legislation.

3. THE MUNICIPAL ACT

Certain Parts of *The Municipal Act* are affected by the amendments proposed by the Committee; for example, Part X governs voting on by-laws and extends to questions which require comment by vote. This Part can extend to the questions required by *The Liquor Licence Act* now that it is recommended that liquor votes be taken under the auspices of the municipal electoral system instead of the provincial system.

Section 256 of *The Municipal Act* will need adjustment to refer to Part III and other Parts which will be introduced as a result of suggested amendments.

Section 257 of the Act, found in Part X, requires a council to enact a separate by-law to appoint a polling day where a by-law requires the assent or opinion of the electors. In the light of the establishment of a fixed election day every two years, retention of this provision provides a conflict with the principle of uniformity and regularity of municipal voting. If votes on questions are to be reserved for the statutory election day only, many actions of local government subject to approval of the electors will be delayed for procedural reasons only. Since the Ontario Municipal Board has the power under its Act to dispense with a vote in certain circumstances, the Board would receive even more requests than it does now to dispense with votes.

It would appear reasonable to allow council to retain the power given to it by section 257 (1) and to use a list prepared by the Clerk pursuant to the powers given to him in the proposed Part III, section 111 subsection 4. The list would be the list used at the last election to which would be added by the revision procedure in the proposed Part III, the names of other persons who since the date of the last election have become qualified. Several sections dealing with qualification of voters must be amended. Section 273 providing for scrutiny of answers to questions must be amended to provide for the same procedure as the proposed Part III provides for re-addition and recount of votes.

Any sections such as 286, subsection 2, referring to three year terms will have to be adjusted and this will require clerical work which will occupy some time but must be done carefully.

Section 286, subsection 1 is the section which requires the assent of the electors to the enactment of by-laws providing for expenditures not provided for in the estimates of the current year, and subsection 3 of the same section excuses the need for electoral assent. Once more reference must be made to the power of the Ontario Municipal Board to dispense with a vote and perhaps some caution should be introduced into the legislation about a too frequent and easy use of the power to excuse votes.

4. THE PUBLIC HEALTH ACT — THE FLUORIDATION OF PUBLIC WATER SUPPLIES ACT — THE LORD'S DAY (ONTARIO) ACT

The provisions of section 80 of *The Public Health Act* providing for a vote following a petition for fluoridation of water was repealed in 1960-61 but the same general principle is to be found in *The Fluoridation of Public Water Supplies Act* and *The Lord's Day (Ontario) Act*, and the same comments apply as are noted with respect to section 72 (2) of *The Liquor Licence Act*.

5. SCHOOLS LEGISLATION

Preliminary detailed examinations of schools legislation indicates to the Committee that extensive changes will be necessary to make these Acts consistent with the proposed Part III of *The Municipal Act*. Most sections from 81 to 96 inclusive of *The Secondary Schools and Boards of Education Act* relating to divisional boards require adjustment with respect to qualification for office and preparation of voting lists. An approximately equal number of changes will have to be made to *The Public Schools Act* and *The Separate Schools Act*.

6. THE ASSESSMENT ACT

Section 17 (1):

Paragraphs 2, 3, and 6 and subsection 3(c) must be amended to include the spouse of those liable to be assessed.

Section 18:

Special provisions for farmers' sons will be unnecessary.

DISSENTING OPINION

In pursuance of Standing Order 78(d) of the Standing Orders of the Assembly, the Committee provides for the inclusion of dissenting opinions in this Report:

By Messrs. Ferrier (Cochrane South), Newman (Windsor-Walkerville), Singer (Downsview), Smith (Nipissing), Young (Yorkview).

To the Members of the Legislative Assembly of Ontario:

We the three Liberal Members of this Committee and the two N.D.P. Members of this Committee together present herewith our Dissenting Opinions to the 4th Report of the Select Committee on Election Laws as follows:

1. We declare the fact that the majority of the Committee has been unable since its appointment on July 23rd, 1968, to make any recommendations for the control of election finances.

The Committee has made extensive investigations of various systems of controlling election finances in other democratic jurisdictions and for the purpose of ascertaining methods and effectiveness of such systems in such other jurisdictions the Committee or some of its members travelled as far afield as England, Australia, Quebec, British Columbia, California, etc.

We believe that basic systems of control such as those presently being used successfully in the Provinces of Quebec and Nova Scotia present to the Committee a series of excellent precedents upon which a meaningful recommendation could have been presented.

We do not believe that the Committee's failure to make such recommendations at this time result from anything other than the lack of desire of the majority of the Committee to effectively come to grips with this most serious problem.

2. We point out that the majority of this Committee in its 4th Report has again refused to recommend that the voting age be reduced to the age of 18 for the purposes of Provincial and Municipal elections, notwithstanding the fact that since the submission of this Committee's 3rd Report the Government of Canada has now seen fit by legislation to fix the minimum voting age at 18.

In the Committee's 3rd Report the majority of the Committee saw fit to tie in a recommendation concerning the lowering of the voting age to the age of 18 with a recommendation that this not be done until the age of majority has been reduced to 18. While we are in

favour of reducing the age of majority to 18 we again repeat that there is no necessity of making these two recommendations inter-dependent and suggest that the only purpose of such a two faceted recommendation by the majority of this Committee was to hopefully delay the lowering of the voting age beyond the date of the next Provincial election.



3 1761 11465998 0